



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
PRINCIPAL SEAT AT GUWAHATI

RSA No. 69/2017

1. Smt. Biva Kakati,
W/o Late Krishna Narayan Kakati,
Resident of Village-Bowalimari, PO-Lalmati,
PS-Abhayapuri, Dist.-Bongaigaon,
Assam-783384.
2. Shri Prabindra Narayan Kakati,
S/o Late Krishna Narayan Kakati,
Resident of Village-Bowalimari, PO-Lalmati,
PS-Abhayapuri, Dist.-Bongaigaon,
Assam-783384.
3. Smt. Anima Kakati,
D/o Late Krishna Narayan Kakati,
W/o Shri Hiranya Das,
Resident of Bijni Town, PO-Bijni,
PS-Bijni, Dist.-Chirang (BTAD),
Assam-783390.
4. Smt. Minakshi Kakati @ Minakshi Kalita,
D/o Late Krishna Narayan Kakati,
W/o Shri Jyotish Kalita,
Resident of Village-Pakipara, PO-Aryajhar,
PS-Chapar, Dist.-Dhubri, Assam-783371.
5. Ms. Janaki Kakati,
D/o Late Krishna Narayan Kakati,
Resident of Village-Bowalimari, PO-Lalmati,
PS-Abhayapuri, Dist.-Bongaigaon,
Assam-783384.
6. Smt. Pushpalata Kakati,
W/o Late Narayan Kakati.

7. Shri Sabin Kakati,
S/o Late Narayan Kakati.
8. Shri Deep Kakati,
S/o Late Narayan Kakati,
Represented by his mother at Sl.No.6,
as his brain is not developed to represent himself.
9. Smt. Barnali Kakati,
D/o Late Narayan Kakati.
10. Shri Mahendra Narayan Kakati,
S/o Late Hari Narayan Kakati.
11. Shri Ramendra Narayan Kakati,
S/o Late Hari Narayan Kakati.
12. Shri Mrigendra Narayan Kakati,
S/o Late Hari Narayan Kakati.
13. Shri Dwijendra Narayan Kakati,
S/o Late Hari Narayan Kakati.
14. Smt. Amala Kakati,
W/o Late Hari Narayan Kakati.

Sl. Nos.6 to 14 are residents of Village-Bowalimari,
PO-Lalmati, PS-Abhayapuri, Dist.-Bongaigaon,
Assam-783384.

15. Smt. Anjali Kakati,
D/o Late Hari Narayan Kakati,
W/o Shri Tapan Das,
Resident of Bilasipara Town, PO-Bilasipara,
PS-Bilasipara, Dist.-Dhubri, Assam-783348.

.....Appellants.

-Versus-

1. Shri Ramesh Ch. Das,
S/o Surendra Ch. Das,
Resident of Basantipara, Abhayapuri Town, Ward No.3,
PO-Abhayapuri, PS-Abhayapuri,
Dist.-Bongaigaon, Assam-783384.
2. Shri Sureswar Majumdar,
S/o Late Kanteswar Majumdar,

Resident of Abhayapuri Town, Piradhara, Ward No.2,
PO-Abhayapuri, PS-Abhayapuri,
Dist.-Bongaigaon, Assam-783384.

3. Smt. Radha Bala Majumdar,
W/o Shri Sureswar Majumdar,
Resident of Abhayapuri Town, Piradhara, Ward No.2,
PO-Abhayapuri, PS-Abhayapuri,
Dist.-Bongaigaon, Assam-783384.

.....Respondents.

**BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN**

For the Appellants : Mr. C. Sharma
Mr. D.C. Nath. Advocates.

For the Respondents : Ms. R. Choudhury. Advocate.

Date of Hearing : 08.08.2024

Date of Judgment : **07.11.2024**

JUDGMENT AND ORDER(CAV)

Heard Mr. C. Sharma, learned counsel for the appellants and also heard Ms. R. Choudhury, learned counsel for the respondents.

2. This regular second appeal under Section 100 of the Code of Civil Procedure, is directed against the judgment dated 27.09.2016 and decree dated 30.09.2016 passed in Title Appeal No.10/2015 by the learned Civil Judge, Bongaigaon. It is to be noted here that vide impugned judgment

dated 27.09.2016 and decree dated 30.09.2016, the learned Civil Judge, Bongaigaon, has upheld the judgment and decree passed in Title Suit No.44/2007 by the learned Munsiff, North Salmara, Abhayapuri.

3. The back grounds facts leading to filing of the present appeal is briefly stated as under:-

“The respondents herein, as plaintiffs, instituted a title suit before the learned Munsiff, North Salmara at Abhayapuri, for declaration of right, title and interest over the suit land measuring 3.25 lecha, which is part of the Schedule-B land by evicting the appellants herein. The case of the respondents was that the respondent Nos.1 to 4 have jointly owned and possessed a plot of land measuring 1 katha at Abhayapuri town under Srijangram Revenue Circle. Each of the respondents had owned 5 lechas of land and the said respondents have possessed the suit land jointly. The appellants have their land in the eastern side of the Schedule-A land. The respondent No.1 purchased a plot of land measuring 5 lecha from the original pattadar Sri Nripen Das through a registered sale deed No.410/2000, dated 22.02.2000 and the respondent Nos.2, 3 and 4 on the same date also purchased a plot of land measuring 5 lechas each, from Nripen Das vide registered sale deed Nos.413/2000, 411/2000 and 412/2000, respectively. The possession of the aforesaid lands was given to the respondents herein and this way the respondents owned total 1 katha land. The respondents thereafter mutated their names in the aforesaid total 1 katha land and they have raised bamboo fencing surrounding the said plot of land. Thereafter, on 12.05.2000, the appellants herein removed the fencing in the eastern side and encroached upon 5 lechas of the land of the respondents, which has been specially

mentioned in the Schedule-B of the plaint and accordingly, the respondents were dispossessed from the aforesaid land. Thereafter, a demarcation case was filed before the Assistant Settlement Officer (ASO), Srijangram Circle, being Demarcation Case No.72/2000. Thereafter, the ASO had demarcated the land along with his staff in presence of the respondents herein and the appellants on 12.02.2001 and in the said plot of land, the appellants herein have no right, title and interest over the Schedule-B land and they have trespassed into the same illegally. In the said suit, the appellants herein appeared and contested the same by filing written statement and they have denied the case of the respondents. But the appellants admitted that the respondents had purchased the land described in Schedule-A of the plaint vide separate sale deeds and accordingly, took the possession and that the appellants had right, title, interest and possession over the suit land measuring 1 katha 5 lechas covered by Patta No.718(old), 1127/324(new), Dag No.1246(old)/250(new) situated at Abhayapuri town under Srijangram Revenue Circle since the days of their predecessor-in-interest late Dandi Ram Kakoti over 57 years.

Upon the pleadings of the parties and the documents placed on record, the learned Trial Court has framed following issues:-

- 1. Is the suit undervalued and stamped?*
- 2. Is the suit bad for non-joinder of necessary parties?*
- 3. Is the plaintiffs had the right, title and interest over the suit land and also entitled to get khas possession of the same?*

4. What relief(s) the plaintiffs is entitled?

Thereafter, hearing both the parties and taking the evidence of both sides, the learned Trial Court had decided the Issue No.1 in negative and in favour of the plaintiffs and Issue No.2 also decided in negative in favour of the plaintiffs and Issue No.3 decided in affirmative in favour of the plaintiffs and Issue No.4 also in favour of the plaintiffs and thereafter, declared that the plaintiffs have right, title and interest over the Schedule-B land and that the Schedule-B land is a part of Schedule-A land and further held that the plaintiffs are entitled to recover khas possession of the portion of land measuring 3.25 lechas, which is a part of Schedule-B land by evicting the defendants and also granting permanent injunction from raising the pucca structure upon the Schedule-B land and the cost of the suit.

Then, being aggrieved, the appellants herein preferred an appeal before the learned Civil Judge, Bongaigaon, being Title Appeal No.10/2015. The learned First Appellate Court, thereafter, formulated following point for determination:-

Whether the judgment dated 25.05.2015 and the decree dated 08.06.2015 passed by the learned Trial Court in Title Suit No.44/2007 is sound in law and facts or whether it lacks propriety, warrant interference in appeal?

In the said appeal, the learned First Appellate Court, after hearing both sides had also affirmed the finding recorded by the learned Trial Court and upheld the judgment and decree passed by the

learned Trial Court vide impugned judgment dated 27.09.2016 and decree dated 30.09.2016.”

4. Being aggrieved by the impugned judgment dated 27.09.2016 and decree dated 30.09.2016 passed by the First Appellate Court, the appellants herein preferred the appeal on the following grounds that:-

- (i) The learned Appellate Court below committed gross error, irregularity and illegality in failing to appreciate the materials on records in proper perspective by applying judicial mind, while passing the impugned Judgment and Decree;
- (ii) The learned Appellate Court below committed gross error and illegality in failing to conceive and interpret the facts and law apparent on the face of records, while passing the impugned Judgment and Decree, in as much as, the respondents/plaintiffs failed to prove the material facts pleaded in the plaint in spite of the fact that the Plaintiffs are required to prove their own case without banking upon the case of the defendants.
- (iii) The learned Appellate Court below committed gross error and illegality in failing to appreciate the fact that the suit land is not properly identified by way of measurement of the entire plots of land owned by the plaintiffs and the defendants, while disposing of the T.A. No. 10/2015.
- (iv) The learned Appellate Court below acted most mechanically without application of her judicial mind in violation of the principle of natural justice, equity, good conscience and judicial fairness and also without considering the principle of balance of evidence while passing the impugned judgment, order and decree

- (v) The learned appellate court below has committed gross error, irregularity and illegality in failing to appreciate the basic principles of possession.
- (vi) The claim of the respondents/plaintiffs having been arisen on the alleged encroachment of the suit land, and as such, the Pattadars of the surrounding of the suit land are necessary parties; but the Respondents/Plaintiffs did not make them parties in the suit and the learned Appellate Court below failed to appreciate such vital aspect of the matter.
- (vii) The respondents/plaintiffs purchased a plot of land measuring 0B-0K-5L each through separate Sale Deeds and mutated the same separately and accordingly, the claim of the respondents/plaintiffs that they have possessed the entire plot of land described in Schedule 'A' of the plaint jointly is not based on materials on record. The suit land being a plot of land measuring 0B-0K-5L is definitely owned by one of the respondents/plaintiffs and not by the other respondents/plaintiffs. As such, the suit ought to have been filed by the respondent/plaintiff who actually owns the suit land by way of impleading the other Respondents/Plaintiffs as proper parties in the suit as the other three Respondents/Plaintiffs are not necessary parties in the suit. The learned Appellate Court below failed to appreciate such vital facts in proper perspective.
- (viii) The learned Appellate Court below miserably failed to appreciate the materials on records that the boundaries of the land possessed by the Respondent/Plaintiff No.4 are in no way connected with the plot of the Appellants/Defendants and the same has been admitted by the Respondent/Plaintiff No.4 in his cross-examination as P.W.-3, that he further deposed in the cross-examination that the

Appellants/Defendants did not dispossess him from his land and that in spite of such materials on evidence the learned Trial Court below made a declaration that Respondents/Plaintiffs have right, title and interest over the suit land and they are entitled to get recovery of khas possession of the suit land measuring 3.25 Lessa by evicting the Appellants/Defendants therefrom, in spite of the fact that the materials and evidence on record discloses that the Respondent/Plaintiff No.4 has no right, title and interest over the suit land. The learned Appellate Court below ought to have appreciated such vital material fact, while passing the impugned Judgment and Decree, and thereby ought to have allowed the Appeal by dismissing the suit of the Plaintiffs.

- (ix) The learned Appellate Court below failed to appreciate the fact that it is not clear in the plaint as to who is the actual owner and possessor of the suit land mentioned in the plaint and even the witnesses of the Respondents/Plaintiffs failed to clarify as to who is the actual owner and possessor of the suit land.
- (x) The learned Appellate Court below failed to appreciate the fact that the original owner of the land mentioned in Schedule A of the Plaint stated in his cross- examination as P.W.-2 that he has not delivered the possession of the respective plots of land sold to the Respondents/Plaintiffs separately with the help of Revenue Authority, and as such, the Respondents/Plaintiffs have no knowledge regarding their actual boundaries of their respective plots of land purchased.
- (xi) The learned Appellate Court below ought to have appreciated the fact that during the trial of the suit the learned Trial Court below directed the local Revenue Authority to measure the total land of

the Appellants/Defendants and the Respondents/Plaintiffs and accordingly, the Revenue Authority only measured the plot of land of the Respondents/Plaintiffs. That the D.W-4, the concerned Lat Mandal stated in his evidence that the Revenue Authority of the Srijangram Revenue Circle measured the plot of land of the Respondents/Plaintiffs only without measuring the plot of land of the Appellants/Defendants, that he does not know the measurement of the land actually and physically possessed by the Appellants/Defendants and that the learned Trial Court below illegally held that 3.25 Lessa of land out of the suit land is under the possession of the legal heirs of deceased Defendant, Krishna Narayan Kakati.

- (xii) The learned Appellate Court below miserably failed to appreciate the fact that the learned Trial Court below accepted some of the documents exhibited by the Respondents/Plaintiffs, which were not admissible in evidence.
- (xiii) The learned Appellate Court below failed to appreciate the fact that the learned Trial Court below on the one hand held in his Judgment in Para 14 that the plot of land measuring 1 Katha 5 Lessa covered by Patta No. 718 (old)/ 1127 (new), Dag No. 1246 (old)/ 250 (new) is not the suit land and that on the other hand the learned Trial Court below declared that the Respondents/Plaintiffs are entitled to get recovery of 3.25 Lessa of land in spite of the same being under the possession of the legal heirs of deceased Defendant, Krishna Narayan Kakati as exclusive owners being a part of the aforesaid plot of land measuring 1 Katha 5 Lessa, which has been held to be not the suit land by the learned Trial Court below.

- (xiv) The learned Appellate Court below failed to consider the ground fact that the P.W. -2, the original owner of the suit land stated in his cross-examination that there is no boundary disputes in respect of the land mentioned in Schedule A of the Plaint since the days of his predecessor-in-interest and that the Appellants/Defendants have been possessing their plot of land measuring OB-1K- 5L with all right, title and interest since the days of his predecessor-in-interest, Late Dandi Ram Kakati for over 57 years peacefully, continuously, openly without any interference from any quarters.
- (xv) The learned Appellate Court below overlooked the fact that during the pendency of the suit, Narayan Kakati, the defendant No.2 of the suit expired on 27.06.2008, that the respondents/plaintiffs substituted the legal heirs of Late Narayan Kakati in the suit, and the respondents/plaintiffs had failed to serve summons of the suit upon the legal heirs of Late Narayan Kakati after substitution and that the legal heirs of Late Narayan Kakati got no chance to contest the suit by filing their written statements.
- (xvi) The learned Appellate Court below has committed gross illegality in affirming the finding on the Issue No.3 without appreciating the evidence and documents on records.
- (xvii) The learned Appellate Court below committed gross error, irregularity and illegality in exercising her jurisdiction in a very perfunctory manner without applying judicial mind properly and without following the principle of equity, justice and good conscience.
- (xviii) The learned first Appellate Court adopted different standards in considering the cases of the Appellants and the Respondents and illegally dismissed the appeal.

5. Thereafter, this appeal was admitted on the following substantial question of law:-

Whether the finding of the Courts below can be held to be correct on the ground that the suit is decreed only on the basis of the Commissioner's report without taking into consideration the fact of dispossession as per the pleadings of the plaintiffs/respondents?

6. Mr. Sharma, learned counsel for the appellants submits that the suit was decreed by the learned trial court only on the basis of Survey Report and without considering the evidence so tendered by the parties. Mr. Sharma also submits that the Commissioner had prepared the report without measuring the land properly and as such gross prejudice is caused to the appellant and the learned appellate court had failed to consider the same. Further, Mr. Sharma submits that there was discrepancy in the proceeding from the very beginning and that the learned trial court ought not to have declared the title of the suit land in favour of the respondents in given facts and circumstances on the record. And on such count the impugned judgment and decree are illegal and arbitrary and it requires interference of this court.

7. On the other hand, Ms. Choudhury, learned counsel for the respondents submits that the learned Trial Court had appointed Amin Commissioner and the Amin Commissioner has visited the place and found 3½ lechas of land under the possession of the defendants. But the learned Trial Court has decreed the suit for 3.5 lechas of land and though originally there was 5 lechas of land. Ms. Choudhury further submits that there is concurrent finding of fact by the learned trial court as well as by

the learned first appellate court and that no substantial question of law is involved in this appeal and that though the Amin Commissioner has submitted survey report, the said report could have been cancelled by the appellants by resorting to the provision under Order XXVI Rule 9 of the CPC, but, they have not done the same. Further submission of Ms. Choudhury is that the respondents had examined 4 witnesses and exhibited the Sale Deed as Exhibits-1, 2, 7 and 8 and the copy of Jamabandi as Exhibit-6 and landholding Certificate as Exhibit-9 and upon considering the same and also considering the Amin Commissioner's report, the learned Trial Court has decreed the suit. Ms. Choudhury, therefore, submits that the impugned judgment and decree passed by the learned First Appellate Court suffers from no infirmity or illegality requiring any interference of this Court.

7.1. Ms. Choudhury has also in support of her submission, referred to a decision of this Court in **Gita Rani Dhar & Ors. v. Milan Kanti Dey & Ors.** [RSA No.177/2004, dated 17.06.2015], wherein based on a decision of Hon'ble Supreme Court in the case of **Pratibha Singh & Anr. vs. Shanti Devi Prasad & Anr.**, reported in (2003) 2 SCC 330, held that non-compliance of the requirement of Order VI Rule 3 CPC cannot be the ground to defeat a decree passed by the Court in favour of a party. It is to be noted here that in paragraph No.17, the court observed as under:-

"When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3 CPC is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47 CPC depending on the facts and

circumstances of each case - which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under Section 152 CPC by the court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the executing court as question relating to execution, discharge or satisfaction of decree within the meaning of Section 47 CPC. A decree of a competent court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission. In the facts and circumstances of the present case, we think it would be more appropriate to invoke Section 47 CPC."

8. Having heard the submission of learned Advocates of both the parties, I have carefully gone through the memo of appeal and the substantial question of law, so framed by this Court and also the impugned judgment and decree passed by the learned First Appellate Court and the judgment and decree passed by the learned Trial Court.

9. It appears that while deciding the Issue No.3, the learned Trial Court has considered the evidence of PW-1, PW-2 and PW-3 and also considered the evidence of DW-1. The learned Trial Court had found that PW-1 and PW-3 had successfully proved the sale deed Nos. 411, 413, 412 and 410 of 2000, dated 22.02.2000 as Exhibits-1, 2, 7 and 8, respectively and further held that PW-2, the seller has proved his signatures on the Exhibits-1, 2, 7 and 8 as Exhibits-1(1) to (5), Exhibits-2(1) to 2(5), Exhibits-7(1) to 7(5) and Exhibits-8(1) to 8(5) and the copy of *Myadi Patta* had also been proved by the PW-1 as Exhibit-3, and the same shows that the patta was issued jointly to the plaintiffs in respect of the Schedule-'A' land. Also the learned Trial Court had held that the

revenue receipt dated 11.09.2000 was proved by PW-1 and PW-3 as Exhibit-5, which shows that the revenue in respect of Schedule-'A' land has been paid by the plaintiff No. 4 and the copy of demarcation certificate, dated 15.01.2001, issued to the plaintiff No.4 by Assistant Settlement Officer, Srijangram Revenue Circle, Abhayapuri, which has been proved by the PW-1 and PW-3 as Exhibit-4, shows that the Schedule-'A' land has been demarcated and boundaries are confirmed by the concerned Revenue Circle and the report also shows that the portion of the land of the defendants encroached by the Abhayapuri Wholesale Consumers Cooperative Society Ltd. and the landholding Certificate, dated 29.06.2000, issued by the Assistant Settlement Officer, Srijangram Revenue Circle, Abhayapuri, to the plaintiffs have been proved by the PW-1 as Exhibit-9, which shows that Schedule-'A' land has been jointly mutated in the names of the plaintiffs and thereafter, the learned Trial Court had arrived at a finding that the plaintiffs have their right, title and interest over the Schedule-'A' land.

10. The learned Trial Court also held that the documents proved by DW-1 as Exhibits-A, B, C, D, E and F, does not belong to Schedule-'A' land and the said documents are in respect of plot of land measuring 1 katha 5 lechas covered by Patta No.718 (old)/1127(new), Dag No.1246 (old)/ 250(new), which is not the suit land. The learned Trial Court also held that Schedule-'B' land which is the part of Schedule-'A' land over which the defendants claimed their right, title and interest has failed to establish the same through evidence, whereas the plaintiffs had established their right, title and interest over the Schedule-'B' land and thereafter, the learned Trial Court has also considered the evidence of DW-4 and Exhibit-G and I. According to D.W.4, after conducting survey of the disputed land, he found that defendant Nos.1(a) to 1(e) are in illegal

possession of the plaintiffs' land measuring about 3.25 lechas. And thereafter, the learned trial court came to a conclusion that the actual measurement of the Schedule-'B' land which is under the illegal occupation of the defendants/appellants, is 3.25 lechas.

11. Notably, DW-4 is the Lat Mandal of Srijangram Revenue Circle, who has deposed that the plot of land covered by Patta No.290 Dag No.249(new)/1245(old) has been surveyed by concerned Lat Mandal and after the survey a report was submitted, which is exhibited as Exhibit-G, and on the basis of the said report, the Circle Officer, Srijangram Revenue Circle had submitted a report, which has been proved as Exhibit-I and from the report (Exhibit-I), it could be seen that out of total 1 katha of land of the plaintiffs, 16 lechas of land has been under possession of the plaintiffs and $\frac{3}{4}$ lecha is footpath and 3.25 lechas of land is under the possession of the legal heirs of deceased defendant Krishna Narayan Kakoti.

12. Thus, it appears that the learned Trial Court while deciding the Issue No.3 in affirmative in favour of the plaintiffs, not only relied upon the Commissioner's report, but also on the evidence adduced by the PW-1, PW-2 and PW-3 and the Exhibits-1, 2, 7 and 8 as well as Exhibits-5 and 9 and also Exhibit-I. That being the position, this Court is unable to record concurrence with the submission of Mr. Sharma, learned counsel for the appellants that the suit is decreed on the basis of Commissioner's report.

13. It also appears that the survey report, submitted by the Commissioner could have been cancelled, in view of Order XXVI Rule 9 of the CPC. But, the appellants herein did not take any such step.

14. And further it appears that the learned First Appellate Court also discussed the evidence of the PW-1, PW-2 and PW-4 and the exhibits and

thereafter, arrived at a finding that the learned Trial Court has rightly decided the issues and thereby affirmed the same.

15. And further it appears that the learned First Appellate Court also discussed the evidence of the PW-1, PW-2 and PW-4 and the evidence of witnesses of the D.Ws. and the exhibits and thereafter, recorded concurrence with the finding of the learned Trial Court on the issues. And thereafter affirmed the same.

16. I have considered the submission of learned Advocates of both sides in the light of materials available on the record. And I find no substance in the submission of Mr. Sharma, the learned counsel for the appellants that only on the basis of the survey report the learned Trial Court had decreed the suit. Besides, the report, Exhibit-I, the learned Trial court also considered the evidence of the Plaintiffs/Respondents and also of the defendants/appellants and the documents exhibited by both sides and thereafter arrived at the reasoned finding.

17. On the other hand, I find substance in the submission of Ms. Choudhury, the learned counsel for the plaintiffs/respondents and the same is supported by the evidence on the record. The decision referred by her also strengthened her submission.

18. Thus, it appears that there is concurrent finding of facts by both the learned Trial Court and also the First Appellate Court.

19. It is well settled in catena of decision of Hon'ble Supreme Court that concurrent finding of fact by the Trial Court and First Appellate Court is binding upon High Court in respect of Regular Second Appeal under Section 100 CPC.

20. Reference in this context may be made to a decision in the case of **Commissioner, Hindu Religious & Charitable Endowments vs. P. Shanmugama reported in (2005) 9 SCC 232**, where it has been held that the High Court has no jurisdiction in second appeal to interfere with the finding of facts.

21. Thereafter, in the case of **State of Kerala vs. Mohd. Kunhi reported in (2005) 10 SCC 139**, the same principle has been reiterated that the High Court is not justified in interfering with the concurrent findings of fact and in doing so, the High Court has gone beyond the scope of Section 100 of the Code of Civil Procedure.

22. Again, in the case of **Harjeet Singh vs. Amrik Singh reported in (2005) 12 SCC 270**, the Hon'ble Supreme Court with anguish has mentioned that the High Court has no jurisdiction to interfere with the findings of fact arrived at by the first appellate court. In this case, the findings of the trial court and the lower appellate court regarding readiness and willingness to perform their part of contract, was set aside by the High Court in its jurisdiction under Section 100 CPC. This court, while setting aside the judgment of the High Court, observed that the High Court was not justified in interfering with the concurrent findings of fact arrived at by the courts below.

23. In view of above proposition of law and also in view of concurrent finding of fact by the learned Trial Court as well as First Appellate Court, which is binding upon this Court, this Court finds no substantial question of law involved here in this appeal and even if there is, the same is answered accordingly.

24. In the result, the appeal stands dismissed.

25. Send down the record of the learned courts below with a copy of this judgment and order. The parties have to bear their own cost.

JUDGE

Comparing Assistant