

**Neutral Citation No. - 2024:AHC-LKO:40227
Reserved/AFR**

Court No. - 5

Case :- SECOND APPEAL No. - 590 of 1988

Appellant :- Gaya Prasad Yadav (Deceased) Thru. (Ram Sumer And Another) And Others

Respondent :- Ram Bux(Deceased) Thru. (Ishvar Deen And 2 others)

Counsel for Appellant :- Balram Yadav

Counsel for Respondent :- S.K.Mehrotra,Nand Kishore

Hon'ble Rajnish Kumar,J.

1. Heard, Sri Balram Yadav, learned counsel for the appellants and Sri Nand Kishore, learned counsel for the respondents.

2. The instant second appeal has been filed for setting aside the judgment and decree dated 26.08.1988, passed in Civil Appeal No.525 of 1982; Gaya Prasad and 3 others versus Ram Bux by the IIIrd Additional District Judge, Faizabad and direct the respondent to not interfere into the possession of the appellants.

3. The following substantial questions of law have been formulated by the court in the second appeal:-

“(i) Whether the suit could be decreed only on the basis of adverse possession when plaintiff was found to have no title or have been in adverse possession?

(ii) Whether the findings of the learned trial court are without consideration of evidence and perverse?”

4. The brief facts of the case, as pleaded in the plaint, by the respondent who had filed the Regular Suit No.79 of 1981(Ram Bux versus Gaya Prasad and others) is that the parties are resident of Village Sidhaura, Sahijauna, Tehsil Bikapur, District Faizabad. The land in dispute marked by letters Ka, Kha, Ga, Gha in the plaint map

belongs to the plaintiff i.e. the respondent in this appeal(hereinafter referred to as the respondent). The land was in possession of the respondent since before the abolition of Zamindari and thereafter after abolition of Zamindari, it was settled with him under Section 9 of the U.P. Zamindari Abolition and Land Reforms Act 1950(hereinafter referred to as the Act of 1950). The respondent used to tie his cattle and keep house hold articles in the said land and has also planted some trees like Ber, Neer, Chilbil etc. The appellants, who were defendants in the aforesaid suit(hereinafter referred to as the appellants), had no concern with the land in dispute. Since there is a pond towards south and west of the house of the respondent, he has shortage of sahan land near his house, therefore he was using the land in dispute for the aforesaid purpose. The plea was also taken that the respondent has matured his title over the land in dispute by way of adverse possession. The appellants, Lakshmi Prasad and Gaya Prasad have their ancestral house in the village in old abadi and about three years back to the filing of the suit, Gaya Prasad had forcibly constructed a house near the disputed land and about 8-10 days back of filing of the suit raised new construction marked by letters Ka, Kha, Pa, Pha in the plaint map, whereas there was no opening towards west in the house of the appellant no.1 situated near the land in dispute. It has also been averred that there is nali in the land in dispute which is being used by the respondent for irrigating his field situated towards south of the land in dispute from the pond on the north side of the land in dispute. The appellants had threatened to dispossess the respondent from the remaining land also marked by letters Pa, Pha, Ba, Bha in the plaint map. Therefore the respondent filed suit for permanent injunction with a prayer for restraining the appellants from interfering with his ownership and possession over the land in dispute and demolition of incomplete new construction. During pendency of the suit, the appellants completed the

constructions Ka, Kha, Pa, Pha and cut one tree of Ber, one tree of Chilbil and two trees of Neem belonging to the respondent worth Rs.1500/-. The respondent amended the plaint and sought the relief of demolition of the disputed construction marked by letters Ka, Kha, Pa, Pha.

5. The respondents contested the case before the trial court by filing the written statement and claiming that they are the owners and in possession of the land in dispute since before the abolition of zamindari, therefore they have become the owners of it after abolition of zamindari. The house of the respondent is situated towards north of the land in dispute at a distance and the land in dispute is not appurtenant to his house, therefore it cannot be said to have been settled with him under Section 9 of the Act of 1950. It has also been averred that land in dispute has always been used by the appellants for tying cattle and keeping Ghobar etc. and trees have been planted by them. It has been denied that the house constructed by the appellant-Gaya Prasad situated towards east of the land in dispute is new one and it is old one and it has always a door facing towards west. Brij Lal was the father of the appellants Lakshmi Prasad and Gaya Prasad. Gaya Prasad had three sons, namely, Ram Pher, Ram Sumer and Mata Deen and Lakshmi Prasad had two sons, namely, Hari Bhajan and Sukh Deo. They have not been made party to the suit, therefore the suit is bad for non joinder of the necessary parties. However, it has been admitted that the old house of appellants No.1 and 2 i.e. Gaya Prasad and Lakshmi Prasad is situated at some distance towards north and east of the present house and there was shortage of accommodation in the old house, therefore Gaya Prasad and Lakshmi Prasad got partition done about 35 years back, consequently, Gaya Prasad constructed new house towards east on the land in dispute, which had come in his share and since then he is the exclusive owner and in possession of the land in dispute. There was a pond towards

east of the house of Gaya Prasad, who levelled it to earth and some new trees have also been planted by him on the land in dispute. The house is situated towards east of the land in dispute and is about 30 years old. There was an old osara of thached structure towards west of the house, which was reconstructed by defendant no.1 i.e. appellant no.1 on pakki wall and it has been denied that the osara was new one.

6. After exchange of pleadings, the trial court framed 9 issues and thereafter the parties led evidence. The learned trial court after considering the pleadings and evidence, allowed the suit filed by the respondent and decreed it by means of the judgment and decree dated 20.11.1982. It was further directed that the appellants shall remove the disputed construction from the land in dispute within two months and do not interfere in the possession and peaceful enjoyment of the land in dispute described in the plaint by the respondent. Being aggrieved by the same, the civil appeal was filed by the defendants i.e. the present appellants. The appellate court, after considering the rival contentions of the parties and affording them opportunity of hearing and considering the pleadings and evidence on record, found that there is no documentary evidence on record by either of the parties, therefore the case is to be decided on the basis of oral evidence and after considering and scrutinizing the evidence of the parties decided the civil appeal by means of the judgment and decree dated 26.08.1988 dismissing the appeal with cost and confirming the judgment and decree passed by the trial court. Hence, the present second appeal was filed, in which the aforesaid substantial questions of law have been formulated.

7. Learned counsel for the appellants submitted that the appellants are in possession on the land in dispute since before the abolition of zamindari and, accordingly, it settled with them under Section 9 of the Act of 1950 after abolition of zamindari. In partition between the brothers, it had come to the appellant no.1, who had constructed the

house on the eastern side of the land in dispute with an opening on the western side of his house towards the land in dispute since beginning. His osara is also on the land in dispute, which is old one. He further submitted that the land in dispute is not appurtenant land to the house of the respondent and at a considerable distance from the house of the respondent on the southern side, therefore it cannot be said to be appurtenant land to the house of the respondent and settled with him under Section 9 of the Act of 1950. He had also never in possession on the land in dispute and the appellants are in possession. But trial court without considering it and the oral evidence adduced before the trial court and wrongly and illegally examining the evidence of the parties, allowed the suit. He further submitted that the appellate court also failed to consider the above and without appreciating the evidence of the parties appropriately dismissed the suit. Thus, the submission was that since the land in dispute cannot be treated an appurtenant land of the house of the respondent, therefore no rights could have been said to have accrued to him on the land in dispute. It has also been submitted that the case set up by the respondent on the basis of adverse possession is also totally misconceived and not tenable for the reason that he had never been in possession of the land in dispute. Accordingly learned counsel for the appellants submitted that the appeal is liable to be allowed and the judgment and decree passed by the first appellate court is liable to be set aside. He relied on *Maharaj Singh versus State of Uttar Pradesh and others*; (1977) 1 SCC 155 and *Smriti Debbarma (Dead) through Legal Representative versus Prabha Ranjan Debbarma and Others*; 2022 Live Law(SC) 19.

8. Per contra, learned counsel for the respondent submitted that the respondent had been in possession on the land in dispute since prior to abolition of zamindari, therefore it has settled with him after abolition of zamindari under Section 9 of the Act of 1950. The respondent was using this land for various agricultural purposes because there is no

land near his house for the said purpose, which is essential for a farmer residing in village. He had also planted some trees on the land in dispute and constructed the nali from north to south for irrigation of his agricultural land from the pond situated adjacent to the land in dispute on the southern side from the pond on the north side of the land in dispute. He further submitted that the appellants had house in the old abadi and the appellant no.1 has constructed a house adjacent to the land in dispute forcibly about three years back but there was no door towards the land in dispute on the western side. However, about 8-10 days prior to filing of the suit, he had opened the door on the western side towards the land in dispute and started making osara on the land in dispute, therefore the respondent had to file the suit. He further submitted that during pendency of the suit, the appellants had completed their construction on the land in dispute and have also cut some trees which has been proved by the commission report, which was conducted in pursuance of the order passed by the trial court in presence of the parties. He further submitted that the learned trial court as well as the first appellate court have rightly and in accordance with law allowed and decreed the suit and dismissed the appeal after considering the evidence led by the parties and pleadings on record. There is no illegality or error in the orders passed by the trial court as well as the appellate court and the concurrent findings of facts recorded by them may not be interfered by this Court as there is no illegality or perversity in it. The appeal is liable to be dismissed. He relied on ***Jangi Singh versus Brij Mohan Singh and others; 2012(30) LCD 2616, Dalip Singh versus Bhupinder Kaur; (2018) 3 SCC 677, Suryakunwari versus Nanhu and Others; 2019(37) LCD 2346 and Bhagauti Singh @ Chedi Singh S/O Madhuban Singh versus Mata Prasad Singh S/O Bhaggu Singh; 2022(40) LCD 2461.***

9. I have considered the submissions of learned counsel for the parties and perused the records.

10. The land in dispute is being claimed to have settled with them by both the parties under Section 9 of the Act of 1950, being in possession since prior to the abolition of zamindari. The spot position shows that the house of the respondent is situated towards north of the land in dispute after a reasonable distance and some abadi and a pond(talab).

11. Section 9 of the Act of 1950 provides for conceptualizing the area appurtenant to buildings to have settled with them. 'Appurtenance', in relation to a building etc. is dependence of the building on what appertains to it for its use as a building. It has been considered by the Hon'ble Supreme Court, in the case of ***Maharaj Singh versus State of Uttar Pradesh and others(supra)*** and held that in short the touch stone of "appurtenance" is dependence of the building on what appertains to it for use as a building. The Hon'ble Supreme Court has also observed that the High Court has granted viz.5 yards of surrounding space, is sound in law although based on the guess work in fact. As such in fact the Hon'ble Supreme Court has observed that 5 years of surrounding space is based only on guess work. However, appurtenant does not mean just adjacent to the house as held by this Court, in the case of ***Ram Sukh versus Gaya Din & Another;1994(12) LCD 733***, the relevant paragraphs 28 and 29 of which are extracted here-in-below:-

"28. It is also well settled that a Riaya may have the Sahan Darwaza on all the sides of a house. It is user of the land on the date of vesting and prior thereto is material. The passing of a galiyara or Rasta or drain in between the building or house and the land over which in relation to a building or house, the rights of appurtenance is claimed, does not adversely affect the sahan darwaza right or rights involving rights of a person to a land as land appurtenant In the case of Special Manager Court of Wards. Balrampur Estate v. Shyam Lal (AIR 1936 Oudh 324) it has been held by the Chief Court of Oudh, that land appurtenant to residential house need not be actually adjoining the house and the user of the land for the enjoyment of the house by the claimant or by person is necessary to be proved with certain length of period may be of 12 years as held by Chief

Court of Oudh in the case of S. Murtaza Ali v. Emperor, reported in (AIR 1947 Oudh page 131).

29. The material observation of the Hon'ble Chief Court of Oudh in the case of Balrampur Estate (Supra) reads as under:

"As to the argument that the land in question cannot be treated as appurtenant to house because there is a public road intervening I do not think there is any force in the contention. No authority has been cited for the view that appurtenant land must actually be adjoining the residential house, prima facie, I do not see why a tenant should not use land opposite his house but on the other side of public way for the purpose of tethering his cattle and why such land should not be regarded as appurtenant to his house. In absence of any authority to the contrary I think it may be held that the land is appurtenant."

12. In view of above, it cannot be said that the land in dispute is an appurtenant land to the house of the respondent and settled with him under Section 9 of the Act of 1950.

13. The other plea taken by the respondent is of adverse possession, but he has not disclosed as to who is the true owner of the land in dispute against whom he is claiming adverse possession and the ownership of appellants has been denied, whereas adverse possession can be claimed against the true owner and only after admitting his ownership and proving his possession in his knowledge without any objection. In absence of any such pleadings and proof, it cannot be said that the respondent has matured his title by way of adverse possession.

14. The Hon'ble Supreme Court, in the case of ***Dagadabai (Dead) by Legal Representatives versus Abbas alia Gulab Rustum Pinjari; (2017) 13 SCC 705***, has held that it is a settled principle of law of adverse possession that the person, who claims title over the property on the strength of adverse possession and thereby wants the Court to divest the true owner of his ownership rights over such property, is required to prove his case only against the true owner of the property. It is equally well-settled that such person must necessarily first admit the ownership of the true owner over the property to the knowledge of

the true owner and secondly, the true owner has to be made a party to the suit to enable the Court to decide the plea of adverse possession between the two rival claimants. The relevant paragraphs 16 and 17 are extracted here-in-below:-

“16. Fourth, the High Court erred fundamentally in observing in para 7 that, “it was not necessary for him (defendant) to first admit the ownership of the plaintiff before raising such a plea”. In our considered opinion, these observations of the High Court are against the law of adverse possession. It is a settled principle of law of adverse possession that the person, who claims title over the property on the strength of adverse possession and thereby wants the Court to divest the true owner of his ownership rights over such property, is required to prove his case only against the true owner of the property. It is equally well settled that such person must necessarily first admit the ownership of the true owner over the property to the knowledge of the true owner and secondly, the true owner has to be made a party to the suit to enable the Court to decide the plea of adverse possession between the two rival claimants.

17. It is only thereafter and subject to proving other material conditions with the aid of adequate evidence on the issue of actual, peaceful, and uninterrupted continuous possession of the person over the suit property for more than 12 years to the exclusion of true owner with the element of hostility in asserting the rights of ownership to the knowledge of the true owner, a case of adverse possession can be held to be made out which, in turn, results in depriving the true owner of his ownership rights in the property and vests ownership rights of the property in the person who claims it.

15. The Hon’ble Supreme Court in the case of ***Ravinder Kaur Grewal and others versus Manjit Kaur and others;*(2019) 8 SCC 729** has held as under in paragraph 60 and 61:-

“60. The adverse possession requires all the three classic requirements to co-exist at the same time, namely, nec vi i.e. adequate in continuity, nec clam i.e. adequate in publicity and nec precario i.e. adverse to a competitor, in denial of title and his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it. Adverse possession cannot be decreed on a title which is not pleaded. Animus possidendi under hostile colour of title is required. Trespasser's long possession is not synonymous with adverse possession. Trespasser's possession is construed to be on behalf of the owner, the casual user does not constitute adverse possession. The owner can take possession from a trespasser at any point in time. Possessor looks after the property, protects it and in case of agricultural property by and large the coricept is that actual tiller should own the land who works by dint of his hard labour and makes the land cultivable. The legislature in various States confers rights based on possession.

61. Adverse possession is heritable and there can be tacking of adverse possession by two or more persons as the right is transmissible one. In our opinion, it confers a perfected right which cannot be defeated on re-entry except as provided in Article 65 itself. Tacking is based on the fulfilment of certain conditions, tacking may be by possession by the purchaser, legatee or assignee, etc. so as to constitute continuity of possession, that person must be claiming through whom it is sought to be tacked, and would depend on the identity of the same property under the same right. Two distinct trespassers cannot tack their possession to constitute conferral of right by adverse possession for the prescribed period.”

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16. The learned trial court as well as the appellate court, on the basis of pleadings and evidence of the parties, found that the land in dispute is situated towards west of the house of the appellants and at a reasonable distance in the south of the house of the respondent and the agricultural land of the respondent is in the south of the land in dispute, adjacent to it. It has been stated by the respondent Ram Bux, who appeared as P.W.1, that he was in possession of the land in dispute since before the abolition of zamindari and his house is situated towards north of it after talab. There was shortage of sahan land near his house therefore his ancestors occupied the land in dispute for various agricultural purposes and work of leather and remained in peaceful possession of this land. In the cross examination, he stated that there is a rasta connecting his house to the land in dispute towards south and there is no ahata in his house towards north and west. The houses of his real brothers Munai and Kandhai are situated towards east of his house. There is no open land towards east of his house and towards north of his house there are bamboo clumps, towards south of his house there is gali and towards west of his house there is talab after some distance. The learned court's below also found that the commissioner's map shows that there is little open land towards west of the house of the respondent and the land in dispute is well connected from his house by a rasta. Admittedly, the agricultural land of the respondent is situated towards south of the land in dispute, which is adjacent to it and there is a naali in the land in dispute from north to south i.e. from the pond(talab) to the land in dispute, in regard to which respondent stated that he has constructed this naali for irrigation of his agricultural field. However, it has been disputed by the appellants, who have stated that it was constructed by them for preserving the water of rains, which could not be proved by any cogent evidence because it goes to the agricultural field of the respondent.

17. The respondent has also stated that he is living separately after separation from his brothers since last 35 years. He has also stated in his evidence that the appellants have their house in the old abadi, which is not disputed by the appellants and he has constructed his house adjacent to the land in dispute about 3 years back, meaning thereby, his house was constructed in the year 1976. P.W.2-Nithuri, though of not the same village, has stated that the respondent has some agricultural land in the disputed village and has also stated that the appellants had pressurized him not to depose in favour of the respondent. There is also no dispute among the parties that there are some trees on the land in dispute. The Commissioner, who visited the spot also found naali which was connecting agricultural field of the respondent situated towards south of the land in dispute from pond, in regard to which a specific plea has been made by the respondent that it was made by him for irrigation of his field. The appellants could not deny the existence of it, which also supports the case of the respondent that he is in possession of the land in dispute, which was being used by him for keeping cattle, ghoor etc. It is settled law that if any person is in possession of any land by any means, he can be ejected only by the real owner in accordance with law and none else. Therefore, merely because the land in dispute is situated at some distance from the house of the respondent, his possession cannot be disbelieved on the land in dispute, when it is proved by evidence and admittedly the agricultural field of the respondent is situated towards south of the land in dispute, adjacent to it since before the chakbandi operation. The aforesaid concurrent findings of fact have been recorded by the trial court as well as the appellate court and held that it cannot be said that the possession of the respondent over the land in dispute was without any basis.

18. While considering the case of the appellants, it has been found by the appellate court that the defendant i.e. the appellant Gaya Prasad,

who is owner of the house situated towards east of the land in dispute has not appeared and adduced any evidence. His brother, Lakshmi Prasad appeared as D.W.1. Though the appellants had set up a case in the written statement that the partition had taken place about 35-36 years back between the brothers but D.W.1 could not state as to when the partition had taken place. In fact the D.W.1 tried to conceal the material facts. D.W.2 Gaya Charan, who has constructed the house of Gaya Prasad stated that his house was constructed about 30 years back. In his cross examination, he has admitted his age as 45 years. Therefore according to him, the house of Gaya Prasad is now about 30 years old, whereas according to the evidence of D.W.3 Jokhu, it was about 20 years old because he stated that when this house was constructed he was aged about 25 years and his statement was recorded in the year 1982 and his age at that time was 45 years. However, according to the commissioner, the house of Gaya Prasad was old one, therefore the appellants have not given the correct and true facts and concealed.

19. The respondent had set up a case that the appellant had no door on the side of the land in dispute and commissioner who visited the spot during pendency of the suit has clearly mentioned in his report that the door was new one and it was opened newly as was evident from the fresh mud used . He has also reported that the disputed construction marked by letters ka, Kha,Pa,Pha was under construction at the time of his visit and it was new one and he found no sign of old construction on the land in dispute. The appellants have failed to give any cogent evidence to show that there was any old construction on the land in dispute. The commissioner has also found some pits in the land in dispute, from where the trees were cut. D.W.2 has also admitted in his cross examination that at the time of construction of ka, Kha,Pa,Pha,he found some dry cut trees on the land in dispute, in regard to which no explanation has been given by the appellants in

their written statement or evidence. D.W.2, has stated that he had constructed the house in the year 1956 and his statement was recorded in the year 1982 therefore the house of Gaya Prasad must have been constructed 25 years back but he has also stated that he had gone to his house about two years back for certain repairs. Therefore on the basis of above, the courts below found that the respondent is in possession of the land in dispute and as correctly observed by first appellate court that the person in possession can be evicted only by the owner of the house that too only in accordance with law and the appellants have failed to prove their ownership and possession on the land in dispute.

20. The Hon'ble Supreme Court, in the case of ***Smriti Debbarma (Dead) through Legal Representative versus Prabha Ranjan Debbarma and Others(supra)*** has held that a person in possession of the land in the assumed character as the owner, and exercising peaceably the ordinary rights of ownership, has a legal right against the entire world except the rightful owner and lies on the party who asserts the existence of a particular state of things on the basis of which she claims relief.

21. The Hon'ble Supreme Court, in the case of ***Ravinder Kaur Grewal and others versus Manjit Kaur and others(supra)***, has held that a person in possession cannot be ousted by another person except by due procedure of law.

22. In view of above the courts below have recorded concurrent findings of facts on the basis of pleadings and evidence of the parties and held that the respondent is in possession on the land in dispute and the appellants have opened a door towards the west of their house on the land in dispute and raised certain constructions on it. This Court does not find any illegality or perversity in the concurrent findings recorded by the courts below, which may require any interference by this Court.

23. A coordinate Bench of this Court, in the case of ***Suryakunwari versus Nanhu and Others(supra)***, considering several judgments including Dalip Singh versus Bhupinder Kaur(supra) has held that the concurrent findings of fact recorded by the two courts are not liable to be set aside unless and until the findings are perverse. The relevant paragraphs 11 to 16 are extracted here-in-below:-

"11. In this case, there are concurrent findings on facts by both the courts below. The Hon'ble Apex Court in catena of judgments has laid down the law that the concurrent findings of fact recorded by two courts below should not be interfered by the High Court in Second Appeal, unless and until the findings are perverse.

12. In a recent case of Shivah Balram Haibatti Vs. Avinash Maruthi Pawar (2018)11 SCC 652 the Apex Court has held as under:- "..... These findings being concurrent findings of fact were binding on the High Court and, therefore, the second appeal should have been dismissed in limine as involving no substantial question of law."

13. In another recent case of Narendra and others Vs. Ajabrao S/o Narayan Katare (dead) through legal representatives, (2018) 11 SCC 564 the Hon'ble Apex Court held as under:-

"...interference in second appeal with finding of fact is permissible where such finding is found to be wholly perverse to the extent that no judicial person could ever record such finding or where that finding is found to be against any settled principle of law or pleadings or evidence. Such errors constitute a question of law permitting interference in Second Appeal."

14. In one more recent case Dalip Singh Vs. Bhupinder Kaur, (2018) 3 SCC 677 the Hon'ble Apex Court has held that if there is no perversity in concurrent findings of fact, interference by the High Court in Second Appeal is not permissible.

15. In Gautam Sarup v. Leela Jetly and Ors. [(2008) 7 SCC 85], the Apex Court held that a party is entitled to take an alternative plea. Such alternative pleas, however, cannot be mutually destructive of each other.

16. In State Bank of India and others Vs. S.N. Goyal; (2008) 8 SCC 92 the Hon'ble Supreme Court has held as under :-

"Second appeals would lie in cases which involve substantial questions of law. The word 'substantial' prefixed to 'question of law' does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the lis between the parties. 'Substantial questions of law' means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the parties. In the context of section 100 CPC, any question of law which affects the final decision in a case is a substantial question of law as between the parties. A question of law which arises incidentally or collaterally, having no bearing in the final outcome, will not be a substantial question of law. Where there is a clear and settled enunciation on a question of law, by this Court or by the High Court concerned, it cannot be said that the case involves a substantial question of law."

24. Similar view has been taken by a Coordinate Bench of this Court, in the case of ***Bhagauti Singh @ Chedi Singh S/O Madhuban Singh versus Mata Prasad Singh S/O Bhaggu Singh(supra)***, in which it has

been held that it is crystal clear that the High Court in exercise of power under Section 100 CPC should not interfere in the findings of fact recorded by the first appellate court, which is a final court of fact or concurrent findings of fact unless the same are based on no evidence or perverse.

25. A coordinate Bench of this Court, in the case of *Jangi Singh versus Brij Mohan Singh and others(supra)*, has held that both the courts below have recorded their finding on the basis of the evidence on record which does not give any rise to the substantial question of law as raised by the defendant-appellant. However observation in regard to appurtenant land is not applicable on the facts and circumstances of this case.

26. The Hon'ble Supreme Court in the case of *Kapil Kumar versus Raj Kumar; (2022) 10 SCC 281*, has held that unless the concurrent findings recorded by the courts below were found to be perverse, the same were not required to be interfered with by the High Court in exercise of powers under Section 100 CPC.

27. In view of above and considering the overall facts and circumstances of the case, this Court is of the view that trial court as well as the first appellate court have recorded finding of facts on the basis of the pleadings and evidence as well as the commission report, which does not suffer from any illegality,error or perversity which may require any interference by this Court. The aforesaid substantial questions of law formulated by this Court are answered accordingly. This second appeal has been filed on mis-conceived and baseless grounds, which is liable to be dismissed.

28. The second appeal is, accordingly, **dismissed** with cost.

(Rajnish Kumar,J.)

Order Date :- 27.05.2024
Akanksha