

Court No. - 5**Case :-** SECOND APPEAL No. - 702 of 1988**Appellant :-** Mahrani Deen**Respondent :-** Shiv Lal And Others**Counsel for Appellant :-** R.K.Nigam,A.S. Chaudhary,Mohd. Mustafizul Haq,P.V. Chaudhary**Counsel for Respondent :-** S.Mirza,Mohd.Kamal,Mohiuddin Khan,Surya Kant**Hon'ble Rajnish Kumar,J.**

1. Heard, Shri P.V.Chaudhary, learned counsel for the appellant and Shri Mohiuddin Khan, learned counsel for the respondents.

2. This Second Appeal under Section 100 of the Civil Procedure Code 1908 has been filed with a prayer to decree the suit of the plaintiff/appellant (here-in-after referred as appellant) for cancellation of sale deed and for declaration with cost after setting aside the judgment and decree dated 24.08.1985 and 11.10.1988 passed by the 2nd Additional Munsif, Pratapgarh and the 2nd Additional District Judge, Pratapgarh respectively.

3. The following two substantial questions of law have been formulated in this Second Appeal:-

“(i) whether the two Courts were justified in dismissing the suit of the plaintiff-appellant for cancelling of the sale deed ignoring the material evidence on record which established the title of the plaintiff and to the contrary, the respondents who are relying upon the impugned sale deed could not establish the title of their vendor?

(ii) Whether the two courts were justified in dismissing the suit by recording a finding that the property was un-identified that when the appellant moved an application for survey commission and it was pressed but erroneously rejected by the two courts which was imperative to come to a cogent finding and what would be its effect on the merits of the case?”

4. Learned counsel for the appellant submitted that the appellant is owner and in possession of the market and the land in dispute which is a part of his Khudkasht land coming since the time of his grand father. The predecessor-in-interest of the appellant i.e. his grand father had constructed market on the said land and a godown and room on the land in dispute which was in the said market. He used to give the shops to the persons for running their business and in lieu thereof use to take rent and baithaki, which is being received by the appellant after his father.

5. He further submitted that the defendant-respondent no.1 is the son of the sister of his father. The father of the appellant had given the shop to him also and he used to pay the Baithaki to him for it. The respondent no.1 left the village Jairampur and started living in Allahabad for the last 8 to 10 years, therefore the appellant took possession of the land in dispute and it is in his possession. He executed a sale deed dated 07.01.1972 in faovur of the defendant-respondent no.2 only on the basis of possession shown in the sale deed without ownership and disclosing it in the sale deed. The predecessor-in-interest of the appellant, after coming to know about the sale deed, filed a Suit for cancellation of sale deed with a prayer for declaration that the predecessor-in-interest of the appellant is the owner of the land in dispute.

6. He further submitted that admittedly the respondent no.1 were two brothers and their other properties were sold by them together, but the sale deed in regard to the land in dispute has been executed exclusively by respondent no.1 without disclosing the ownership. The trial court without considering it and the judgment and order dated 23.07.1954 passed in Writ Petition Misc.No.523 of 1952 filed by the father of the appellant, which was allowed by the High Court holding that he is the owner of the property and the application of the Gaon Sabha for setting aside the said order dated 23.07.1954 was rejected by the High Court.

7. He further submitted that the appellant had filed an application for survey commission for identification of the land in dispute because it is not identifiable but the same was rejected on 28.04.1981. He further submitted that Saukat Ali was Pradhan of the Gaon Sabha, who had also filed the Suit for possession of the Gata Nos.778, 779, 780, 777/Min. 4 kita and 751/1 minj. 5 kita against the predecessor-in-interest of the appellant, which was dismissed by the trial court. The Gata No.462 is new number of Gata No.780, which is apparent from Aakar Patra 45 of Gram Jairampur, Pargana and Tehsil-Patti, district-Pratapgarh and the appellant is recorded as bhumidhar with transferable rights of the said land and the land in dispute is situated in the same. When Shaukat Ali had not succeeded in the suit and the writ petition filed before the High Court, he got the sale deed executed by the respondent no.1 in favour of respondent no.2 and himself became the witness in the sale deed. Learned counsel for the appellant also submitted that the application filed under Order 41 Rule 26 CPC was also rejected.

8. He further submitted that learned Trial court as well as the appellate court without considering that the respondent no.1 was not the owner of the land in dispute and executed the sale deed without partition, even if he was owner and also that the land in dispute is not identifiable and the application of the predecessor-in-interest of the appellant for survey commission was rejected, dismissed the suit as well as the appeal filed by the appellant respectively, which are not sustainable and liable to be set aside and this Second Appeal is liable to be allowed.

9. Per contra, learned counsel for the respondents submitted that respondent no.1 had executed the sale deed being the owner and in possession of the land in dispute in favour of respondent no.2. The suit was filed without disclosing the property number and the boundaries of the land in dispute. Contention of the appellant that the room on the land in dispute was given to the

respondent no.1 for keeping shop and he used to pay rent and baithaki to the predecessor-in-interest of the appellant is misconceived and wrong and no proof thereof has been filed. Similarly the contention of learned counsel for the appellant regarding any enmity between the predecessor-in-interest of the appellant and the Gram Pradhan of Gaon Sabha and some other persons and on account of which he got forged sale deed executed by the respondent no.1 in favour of respondent no.2 of the rooms in dispute is also misconceived and not tenable and without disclosing and filing any proof hereof, whereas the Gram Pradhan in official capacity and in the interest of Gaon Sabha had pursued the cases against the appellant for the market.

10. He further submitted that the sale deed was executed by the respondent no.1 being owner and in possession of the property in dispute and it was specifically pleaded in the written statement and proved by adducing evidence, therefore, on the basis of any averment in the sale deed it cannot be said that the respondent no.1 was not the owner of the land in dispute. He further submitted that the application for survey commission filed by the predecessor-in-interest of the appellant was dismissed by means of order dated 28.04.1981, which has never been challenged by the predecessor-in-interest of the appellant, therefore, now the appellant cannot raise any plea in this regard. The respondent no.1 also filed a copy of Pariwar Register in which the name of the respondent no.1 was recorded. He also submitted that the application for amendment filed by the appellant for incorporating the number of the property in dispute in the plaint at the appellate stage which was also rejected, but it has also not been challenged by the appellant. In regard to which learned counsel for the appellant submitted that each and every order passed during trial or appeal is not required to be challenged and the plea in regard to the same can always be set up in the appeal. Thus the submission of learned counsel for the respondents is that

learned trial court as well as the first appellate court have rightly passed the impugned judgment and decrees in accordance with law which does not suffer from any illegality or error. The substantial questions of law formulated in this appeal or any other substantial question of law does not arise in this appeal. The appeal is misconceived and liable to be dismissed.

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

12. The respondent no.1 had executed the sale deed of the property in dispute situated in village Jairampur, Pargana and Tehsil-Patti, district Pratapgarh on 07.01.1972 in consideration of Rs.2,000/-. The predecessor-in-interest of the appellant filed Regular Suit No.179 of 1972; Mathura Prasad Versus Shiv Lal and another for cancellation of sale deed dated 07.01.1972 of land marked as A, B, C, D, E, F, G and A in the site plan prepared by the advocate commissioner adopted by plaintiff appellant and declare the appellant as owner of the said land alleging therein that the appellant and the respondents are residents of Jairampur, Mirzapur Chauhari and the property in dispute is situated in Jairampur. The disputed property is khudkasht land of the family of the appellant on which the grand father of the appellant had started a market about 60 years back. He had constructed several shops, houses, tin sheds and thatches for keeping the shops by the persons and they used to pay the rent (baithaki) for the same to his father and thereafter the appellant. After abolition of the Zamindari there were cases with the Gaon Sabha in regard to the market and all the market was treated under the ownership of the appellant by the High Court, Allahabad. Similarly the Munsif, Kunda and Civil Judge, Pratapgarh have also accepted the ownership of the appellant on the market in the cases with some persons of market. The appellant is also doing the business of grains. To run it properly, he has constructed the Godown and the Rooms shown as A, B, C, D, E, F, G and A in the aforesaid Map

and he is in possession of the same till date. It has further been averred that the respondent no.1 Shiv Lal is son of the sister of the plaintiff i.e. the father of the appellant and he is also running a shop in the disputed rooms adjacent to the Godown and use to pay the rent and Baithaki to the appellant. About 8 to 10 years back the respondent no.1 had left to keep his shop in the market and opened a shop of Grains in Allahabad. Thereafter the appellant made possession on the property in dispute and it is in his possession till date. It has further been averred that on account of rivalry of the appellant with the Gram Pradhan of the Gaon Sabha and some other persons, they got the forged sale deed executed by the respondent no.1 in favour of the respondent no.2, whereas the respondent no.1 has no concern with the disputed rooms. The respondent no.2 had tried to force the appellant to leave the possession from the land in dispute through the local police, therefore he had made a complaint to the Superintendent of Police.

13. The Suit was contested by the respondents no.1 and 2 by filing separate written statements and additional written statement by the respondent no.2 denying the averments made in the plaint and claiming that the respondent no.1 is in possession of the land in dispute since prior to abolition of Zamindari and accordingly it has settled with him as part of his Abadi under Section 9 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (here-in-after referred as the Act of 1950). It has also been stated that the respondent no.1 has executed a sale deed dated 07.01.1972 in consideration of Rs.2,000/- in favour of the respondent no.2 and handed over the possession to him, who is in possession since then. It has also been stated by the respondent no.2 that since the construction of the land in dispute was in dilapidated condition, therefore he got it removed to construct a new house, but on account of the interim injunction he could not construct it. It has also been stated by respondent no.2 that on account of hindrances

made by the appellant in his possession, he had made a complaint to the Superintendent of Police, on which an inquiry was made and the appellant had executed a Panchnama admitting the title and possession of the respondents and given an undertaking that he would not make any obstruction, therefore he had not taken any further steps in the matter. The additional written statement was filed by the respondent no.2 alleging therein that there is a well on the northern side of the land in dispute and there is a way besides the well for going to the market, which is on the eastern side of the land in dispute. It has also been averred that on the said way the appellant had forcibly got Makaan-9 shown in the commission map constructed. The commission was also conducted during pendency of the suit in which the land in dispute has been shown A, B, C, D, E, F, G and A, market has been shown on the eastern side of the land in dispute. There is a well on the northern side besides its Makaan No.1. Dulhupur-Raniganj road is on the western side of the land in dispute. There is a way on the southern side and thereafter the house of Lala Ram.

14. After exchange of pleadings, six issues were framed by the trial court. Thereafter the evidence was adduced by the parties. After considering the pleadings, evidence and material on record the trial court dismissed the suit by means of judgment and decree dated 24.08.1985 holding that the appellant has failed to prove his ownership on the land in dispute, whereas the respondents have proved that they are owner and in possession of it and the respondent No.1 has executed a registered sale deed in favour of respondent no.2. Being aggrieved by the judgment and decree passed by the trial court, the appellant preferred Civil Appeal No.351 of 1985, which has also been dismissed by the appellate court by means of the judgment and decree dated 11.10.1988 considering the pleadings, evidences and material on record and holding that the appellant has failed to prove that he is

owner of the house situated on the land in dispute and he is in possession of the land in dispute and confirmed the judgment and decree passed by the trial court. Hence the present Second Appeal has been filed.

15. The father of the appellant filed the Suit claiming that his grand father had started a market 60 years back on khudkasht land of his family and the land in dispute is part of market and the High Court, Allahabad has held that the appellant is the owner of the whole land of the market in the cases with the Gaon Sabha and he is in possession of the rooms and on the land in dispute, but the appellant has not disclosed the number of his khudkasht land and the number in which the land in dispute is situated and no documentary evidence or cogent evidence to support his case has been filed. Perusal of the order dated 23.07.1954 passed in Civil Misc. Writ Petition No.523 of 1952; Sri Mathura Prasad Versus Sri Bansi Lal and others indicates that the petition under Article 226 of the Constitution of India was filed by the father of the appellant for restraining the opposite parties from interfering with the possession and enjoyment of the Bazar property belonging to the petitioner and from interfering from realizing of the baithaki by the petitioner. The petition was decided exparte recording that the affidavit filed in support of the petition shows that the bazar on this land was started by the petitioner's father when this land was his khudkasht and continued to be in possession of the petitioner's father and after him of the appellant and under the U.P.Zamindari Abolition and Land Reforms Act the rights of an owner in such a Bazar has been continued and have not been taken away and have not vested either in the State or in the Gaon Sabha. The petition appears to had been filed because the Gaon Sabha had given the Theka to the opposite party no.5 of the market. The writ petition was allowed restraining the opposite parties no.1, 4 and 5 in the said petition from interfering with the exercise of the rights of the petitioner in the Bazar. It has also

been observed that since the petition has not been contested no costs have been awarded. Thus it is apparent that the High Court has only issued a mandamus in regard to the rights of the predecessor-in-interest of the appellant with respect to exercise of his rights for the market on his KhudKast land and there is no declaration in regard to ownership of the land. This order does not indicate that the said order was in regard to the property in dispute also because the market is on the eastern side of the property in dispute and separate. A petition was filed by the Gaon Sabha subsequently for amending the aforesaid judgment and order dated 23.07.1954, which was treated as an application in Civil Misc. Writ Petition No.523 of 1952 and rejected by means of the order dated 23.04.1959.

16. Learned trial court, on the basis of map, has recorded a finding that the market is in the east of the property in dispute and there is a road in the west, Chah Pokhta in the north and house of Lala Thekedar in the south, which indicates that the property in dispute is not part of the market of the appellant and it is also not situated in the market. Though the appellant claims that the land in dispute is khudkasht of his family and stated disputed number, but he has not disclosed its number.

17. The father of the appellant has also stated that the respondent no.1 is the son of his sister, who had shop in the rooms in dispute and used to pay the rent and baithaki for it, but no evidence in support thereof has been produced by the appellant. He has not disclosed as to when it was given on rent and what was the rent and any proof of payment of rent by the respondent no.1. However it shows admission of the appellant that respondent no.1 was running shop on the land in dispute.

18. The appellant had also filed a copy of the order dated 27.04.1972 passed by the Settlement Officer Consolidation, Pratapgarh in Appeal No.3643 under Section 11(1) of the Consolidation of Holdings Act in regard to Gata Numbers 778,

779, 781 and 751, which was filed against the order passed by the Consolidation Officer. The appellant and the father of the appellant herein was claiming that it should be recorded in their name. The appeal was dismissed on the ground that it is in the shape of Abadi, therefore it cannot be recorded in anybody's name.

19. The respondent no.1 executed the sale deed in favour of respondent no.2 on 07.01.1972 stating therein that he is in possession of the property in dispute. In the written statement filed before the trial court it was averred that the respondent no.1 was owner and in possession of the land in dispute and he had executed the sale deed in favour of respondent no.2. Same plea was taken by the respondent no.2. It was also stated in the sale deed that the land in dispute is free from all incumbrances and clear and the rights which are with the respondent no.1 have been transferred to the respondent no.2. In the written statement it was claimed that the house on the land in dispute was constructed by the grand father of the respondent no.1, on which he is in possession and owner and executed the sale deed in favour of the respondent no.2. It has also been averred by the respondent no.1 that the property in dispute is settled with him under Section 9 of the Act of 1950. Section 9 of the Act of 1950 provides that all wells, trees in abadi and all buildings situated within the limits of an estate belonging to or held by an intermediary or tenant or other person whether residing in the village or not, shall continue to belong to or be held by such intermediary tenant or person, as the case may be, deemed to be settled with him by the State Government. Therefore all buildings and appurtenant land thereto which were in possession of anybody prior to the abolition of the Zamindari by any person whether residing in the village or not continued to belong to him and the appurtenant land settled with him. Two more sale deeds executed by the respondent no.1 and his brother Shambhu Lal on 05.01.1972 and 06.01.1972 of the

properties situated in village Jairampur have been placed on record before the trial court. Thus it cannot be disputed that the respondent no.1 was a resident of village Jairampur and he had properties which had been sold by him.

20. Learned Trial court as well as the appellate court also after considering the pleadings of the parties, evidence and material on record have concluded that the respondent no.1 had properties in Jairampur. Thus it is proved that the respondent no.1 was the owner and in possession of the land in dispute and also in view of the claim of the appellant that the respondent no.1 was keeping a shop in the market up to 8 to 10 years back, without any proof that it was under the tenancy of the appellant, the respondent no.1 was in possession of the property in dispute. Therefore merely because the ownership of the property in dispute has not been stated in the sale deed in question cannot be a ground to cancel the sale deed. That too on the instance of the appellant, who has failed to prove his ownership and possession on the property in dispute. The contention of the appellant that the respondent no.1 had executed the other sale deeds of village Jairampur alongwith his brother but the sale deed in question was executed exclusively by the respondent no.1, therefore liable to be set aside. However it does not make it void or liable to be cancelled on the instance of the appellant because objection in this regard could have been raised or suit for cancellation of sale deed on this ground could have been filed only by the brother of the respondent no.1. It is settled law that a person cannot transfer better title than he has. Rights in the property in dispute transferred through the sale deed in question would be same as were, but it does not give any right or cause of action to the appellant to get it cancelled, who has failed to prove his ownership and possession on the property in dispute.

21. The trial court as well as the appellate court after considering the aforesaid order passed by the High Court,

Allahabad have observed that it cannot be said that the dispute of land in dispute was in the said petition or in the other cases which have been said to be within the appellant and other shop keepers. The appellant has stated that the land in dispute is situated in Gata No.461 and 462, the old number of which were 779 and 780 on which the father of the appellant Mathura Prasad was in possession as Bhumidhar, but it has not been disclosed in the plaint. However the said numbers are recorded as Aabadi in the revenue records, whereas the appellant is claiming it as his khudkasht and Bhumdhari. The Commission report also does not indicate that the property in dispute is part of the market or situated in the market. However it completely supports the boundaries given by the appellant in site plan in the plaint and the commissioner report. The respondents have also admitted the aforesaid boundaries in their evidence. The area of the property in dispute has also not been give. Thus the appellant has failed to prove that he is owner and in possession of the property in dispute. Whereas the courts below particularly the first appellate court after scrutinizing the evidence adduced by the parties deeply has recorded the finding that the land in dispute was settled with the defendant no.1 that is the respondent no.1 under section 9 of the Act of 1950 as such he had become owner and in possession of the land in dispute.

22. Learned trial court as well as the appellate court after considering the pleadings of the parties, evidence and material on record have held that the appellant has admitted the execution of the sale deed of the property in dispute by the respondent no.1 to respondent no.2 and the only allegation is that it is forged, but he failed to prove as to how it is forged. Therefore it cannot be cancelled. This court does not find any error, illegality or perversity in the findings recorded by the courts below.

23. The application for Survey Commission filed by the appellant was dismissed by the trial court because it was moved at

the stage of evidence on the ground that the suit is for cancellation of sale deed and it is at the stage of evidence by means of the order dated 28.04.1981. The appellant had neither disclosed the number in which the property in dispute is situated in the plaint nor in the application for survey commission.

24. Order XXVI Rule 9 provides for commissions to make local investigations, according to which in any suit in which the court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the court. Therefore the survey commission can be issued if the court finds that local investigation is requisite or proper for the purposes of elucidating any matter in dispute. Thus the survey commission can be issued for identification of the property in dispute if required for elucidating any matter in dispute by the court. It is discretion of court to issue survey commission for identification of property in dispute if required for elucidating any matter in dispute and learned counsel for the appellant has failed to show any illegality, error or perversity in the order passed by the trial court on application for survey commission because no dispute regarding situation of property in dispute in any number was raised. The numbers 461 and 462 old number of which are 779 and 780 as shown in some orders are recorded as Aabadi, whereas the appellant is claiming that his predecessor-in-interest had started market on his khudkasht land and the property in dispute is part of it, which he had failed to prove, therefore, the application for amendment for recording plot numbers in the plaint was also rightly and in accordance with law dismissed by the appellate court and the first appellate court considered it and after scrutinizing the evidence and pleadings of parties has

recorded that it was of no use. The appellant has also failed to prove his ownership and possession on the property in dispute and the suit was filed for cancellation of sale deed and declaration, the registration of which has not been denied, therefore this court is of the view that the application for survey commission was rightly and in accordance with law was rejected. Even otherwise in the suit for cancellation of sale deed and declaration unless the ownership on the property in dispute is proved by any cogent evidence no relief could have been granted. In view of section 105 CPC, contention of learned counsel for the respondent in regard to non challenge to orders passed on application for survey commission and amendment separately seems to be misconceived because the plea can be set up in appeal if it affects the decision of the case.

25. In this case the concurrent findings of fact have been recorded by the trial court as well as the first appellate court on the basis of pleadings, evidence and material on record and came to the conclusion that the respondent no.1 was the owner and in possession of the property in dispute. He had executed registered sale deed of the property in dispute in favour of the respondent no.2 and on the basis of the same he had become owner and in possession on the property in dispute. The appellant claims the property in dispute in his market, which was started by the grand father and coming to him through his father but failed to prove it, which is also apparent from the site plan in the plaint and the site plan prepared by the Commissioner and submitted alongwith his report, according to which the market is on the eastern side of the property in dispute. Thus this court does not find any perversity, error or illegality in the findings recorded by the courts below, which may require any interference by this court.

26. A coordinate Bench of this Court, in the case of *Suryakunwari versus Nanhu and Others 2019(37)LCD2346*, considering several judgements 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."

27. 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***2022(40)LCD2461, 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.

28. A coordinate Bench of this Court, in the case of *Jangi Singh versus Brij Mohan Singh and others; 2012(30)LCD2616*, 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.

29. 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.

30. In view of above and considering the overall facts and circumstances of the case this court is of the view that the impugned judgment and decrees have been passed in accordance with law by reasoned and speaking order, which does suffer from any illegality, error or perversity. The substantial questions of law formulated by this court are answered accordingly. This Second Appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed.

31. The Second Appeal is, accordingly, **dismissed**. No order as to costs.

(Rajnish Kumar,J.)

Order Date :-29.05.2024
Banswar