

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 24 of 2009
Reserved on: 19.09.2026
Date of decision: 30.09.2026

Suraksha Puri...Appellant

Versus

Rajesh Kumar & others...Respondents

Coram:

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

For the appellant : Mr. Ajay Kumar, Senior Advocate with
Mr. Vinay Kumar Thakur, Advocate.

For the respondents : Mr. R.K. Bawa, Senior Advocate, with
Mr. Abhinav Thakur, Advocate, for
respondent No.1.

Respondent No.2 stands deleted.

None for respondents No.3 to 11.

Romesh Verma, Judge:

The instant regular second appeal has been filed against the judgment and decree passed by the learned District Judge (Forest), Shimla, dated 01.10.2008, whereby the appeal filed by the present appellant/defendant was dismissed and the judgment and decree as passed by the learned Civil Judge (Junior Division), Court No. 3, Shimla, dated 09.05.2005, was affirmed, whereby the suit filed by the respondent/plaintiff for specific performance of contract was decreed.

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

2. The facts, as emerge in the present case, are that the plaintiff/respondent filed a suit for specific performance of contract dated 19.06.1993 against defendant No.1 directing him to get the sale deed registered pertaining to the house/set Nos. 24/4 and 24/5 situated in Jutog Cantt, Shimla, with a further prayer that decree for permanent prohibitory injunction be passed restraining defendant No.1 from transferring or selling the house situated over the suit land in favour of defendant No.2 or any other person, either himself or through his attorney, agents, contractors, etc.

3. As per the case as set up by the plaintiff, defendant No.1, Shri Manohar Lal, entered into an agreement to sell on 19.06.1993 with the plaintiff whereby he agreed to sell house Nos. 24/4 and 24/5 for a total sale consideration of Rs.37,000/- only. Defendant No.1 is the owner of the house/structure over the land situated at Jutog Cantt.

4. At the time of entering into the aforesaid agreement, defendant No.1 had shown a registered sale deed dated 28.05.1960, registered at serial No.19 in book No.I, volume No.30, at pages 122 to 125. At the time of execution of the agreement, defendant No.1 agreed to execute the sale deed pertaining to house/set Nos. 24/4 and 24/5, which are situated on the first floor of the aforesaid structure known as house No.74/24, in favour of the plaintiff for a total sale consideration of Rs.37,000/- only and he assured that the aforesaid sale deed shall

be duly executed as and when the mutation of the aforesaid building is entered in his name.

5. At the time of the aforesaid agreement dated 19.06.1993, defendant No.1 received earnest money to the tune of Rs 9,000/- only for the sale of aforesaid house bearing Nos.24/4 and 24/5. After receiving the payment of Rs 9,000/- as earnest money out of the total sale consideration of Rs 37,000/-, defendant No.1 executed and issued a receipt dated 19.06.1993, whereby he acknowledged the receipt of the earnest money and also the fact regarding entering into the agreement to sell.

6. As per the case set up by the plaintiff, he came to know that defendant No.1 was intending to sell the suit property in favour of defendant No.2 in violation of the agreement dated 19.06.1993 entered into between the parties. The plaintiff called upon defendant No.1 time and again to execute the sale deed in his favour and further made efforts to pay the balance amount of the sale consideration to defendant No.1. However, on one pretext or the other, defendant No.1 evaded the liability to execute the necessary sale deed in favour of the plaintiff. Defendant No.1 is duty-bound to execute the sale deed in favour of the plaintiff when the plaintiff is ready and willing to pay the entire amount of consideration and also to perform all needful acts required under the law.

7. Under such circumstances, the plaintiff filed a suit for a decree directing defendant No.1 to execute sale deed in favour of the plaintiff with respect to house/set Nos. 24/4 and 24/5 situated in house No. 74/24, Jutog Cantt., Shimla, for total sale consideration of Rs.37,000/- only. It was further prayed that defendant No.1 be restrained permanently from transferring or selling the house situated over the suit property either in favour of defendant No.2 or any other third person or through his attorney, agents, contractors, etc.

8. The suit was duly contested by the defendants by filing written statement, denying and refuting all the averments and allegations made in the plaint. The written statement was duly signed by both defendants. It was contended in the written statement that, as a matter of fact, defendant No.1 had only agreed to sell house No.24/4 to the plaintiff. House No. 24/5 was never agreed to be sold to the plaintiff because it had already been agreed to be sold to defendant No.2 vide an agreement to sell dated 30.10.1991, which agreement was subsequently novated on 26.06.1993 upon receipt of another sum of Rs.16,500/- by defendant No.1 from defendant No. 2. The fact that house No.24/5 had already been agreed to be sold by defendant No.1 in favour of defendant No.2 was well within the knowledge of the plaintiff. At the relevant time, the plaintiff had given an advance of Rs.9,000/- to defendant No.1 on 19.06.1993 for the purchase of house No. 24/4 at Jutog Cantt.

9. As per the defendants, on 19.06.1993, the plaintiff along with three other persons, namely Piyare Mohan, Joginder Gupta, and Jaswant Kumar, approached defendant No.1 in the shop of Sita Ram Gupta for the sale of portion No.24/4 occupied by the plaintiff and his father, and the matter was ultimately settled at about 12:00 midnight with the intervention of the said persons. When defendant No.1 agreed to sell portion No. 24/4 occupied by the plaintiff and his father Kailash Chand, the plaintiff gave an advance of Rs.9,000/-. Shri Piyare Mohan wrote a receipt for the same, which was signed by defendant No.1, who was an old person and the said receipt was executed in good faith as the plaintiff was relative of defendant No. 1.

10. It is the case of the defendants that the plaintiff conspired with the scribe of the receipt and obtained the signatures of defendant No.1 on the receipt by deception and fraudulent means, by giving an impression that it was a receipt for house No.24/4 only. Further, it is the case of the defendants that at that time, defendant No.1 was not having spectacles with him and the receipt was read out to him indicating that only house No.24/4 had been agreed to be sold. Thus, the signatures of defendant No.1 were obtained on the receipt fraudulently and by deception. The defendants accordingly prayed for the dismissal of the suit filed by the plaintiff.

11. The plaintiff filed replication to the written statement filed by the defendants. All the averments made in the plaint were specifically pleaded and reiterated.

12. The learned trial court framed the issues in the matter on 28.06.1994 in the following manner:

1. Whether the defendant No.1 agreed to sell house No.24/4 and 24/5 to the plaintiff vide agreement to sell dated 19.6.1993, if so, its effect? OPP.
2. Whether the plaintiff is entitled to the relief of Specific performance of contract as alleged? OPP.
3. Whether the plaintiff is also entitled for the relief of permanent prohibitory injunction, as alleged? OPP.
4. Relief.

13. The learned Civil Judge (Junior Division), Court No. 3, Shimla, vide judgment and decree dated 09.05.2005, decreed the suit filed by the plaintiff and the legal representatives of defendant No.1, who died during the pendency of the suit, were directed to execute the sale deed in favour of the plaintiff with respect to house Nos.24/4 and 24/5 of the property known as house No.74/24 situated at Jutogh Cantt., Shimla, subject to the plaintiff paying the remaining amount of the sale consideration to the legal representatives of defendant No.1. Further, the legal representatives of defendant No.1 were restrained by way of a permanent prohibitory injunction from transferring or selling the suit property in favour of defendant No.2 or any other person.

14. Feeling dissatisfied, the defendant No.2 preferred an appeal under Section 96 of the Code of Civil Procedure in the Court of the learned District Judge, Forest, Shimla, on 24.06.2005. The learned first appellate court, vide impugned judgment and decree dated 01.10.2008, dismissed the appeal filed by the defendant and affirmed the findings returned by the learned trial court.

15. Still feeling aggrieved, the appellant/defendant No.2 has approached this Court by instituting the instant regular second appeal under Section 100 of the Code of Civil Procedure.

16. It is contended by Mr. Ajay Kumar, learned senior counsel, assisted by Mr. Vinay Kumar Thakur, learned counsel, for the appellant that the judgments and decrees as passed by the learned courts below are erroneous and liable to be quashed and set aside. He submitted that the courts below have erred in decreeing the suit filed by the respondent/plaintiff without taking into consideration the oral as well as documentary evidence placed on record. He further submitted that the plaintiff/respondent is not entitled to a decree for specific performance in the absence of sufficient proof. He submitted that after accepting the present appeal the suit filed by the plaintiff/respondent deserves to be dismissed.

17. On the other hand, Mr. R.K. Bawa, learned senior counsel, assisted by Mr. Abhinav Thakur, learned counsel, for the respondent No.1 has defended the impugned judgments and decrees

passed by the learned courts below. He submitted that this Court, while exercising powers under Section 100 of the Code of Civil Procedure, will not interfere with the concurrent findings of fact returned by the learned courts below in the absence of any perversity or illegality in the said judgments.

18. I have heard the learned counsel for the parties and have gone through the record carefully.

19. This Court admitted the appeal on 26.05.2010 on the following substantial questions of law:

1. Whether in the facts and circumstances of the case the provisions of section 53A of the Transfer of Property Act were attracted and if so to what effect?
2. Whether there has been miscarriage of justice and trial for not framing of issues on the point of fraud/ deception practised on the original defendant No. 1 as alleged in the written statement and if so to what effect?
3. Whether the findings of the Courts below on issue No. 1 to 3 are perverse and a result of misreading of evidence and law as applicable to the facts of the case and as such palpably erroneous and if so what effect?
4. Whether the learned First Appellate Court has failed to frame proper points for determination and if so to what effect?
5. Whether the learned First Appellate Court has acted with material illegality, irregularity and impropriety in disallowing the application of the Appellant under Order 41 Rule 27 C.P.C. and if so to what effect?

6. Whether both the Courts below have misread the oral and documentary evidence particularly Ex PW1/A and DW1/ A to DW1/C and if so its effect on the judgments passed by the Courts below?

20. As far as the substantial question of law No.1 is concerned, the appellant has stated that in the attending facts and circumstances of the case, the provisions of Section 53A of the Transfer of Property Act are attracted to the present case. A perusal of the pleadings and the evidence placed on record clearly reveals and demonstrates that neither in the pleadings nor in the evidence this was the case set up by the present appellant.

21. The provisions of Section 53A of the Transfer of Property Act read as follows:

“53A. Part performance.—Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against

the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract: Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.”

22. It is well settled that the defendant who intends to avail the benefit of Section 53A of Transfer of Property Act must plead that he has taken possession of the property in part performance of the contract. Perusal of the written Statement of defendant No.2/appellant shows that she has not raised such plea. Pleadings are meant to give to each side, intimation of the case of the other, so that it may be met to enable Courts to determine what is really at issue between the parties. No relief can be granted to a party without the pleadings. Therefore, it is not open for the appellant to claim the benefit available under Section 53A of Transfer of property Act. The Hon'ble Apex Court in ***Shyam Narayan Prasad vs. Krishna Prasad and others, (2018) 7 SCC 646*** has held as follows:

“23. The last contention of the learned counsel for the appellant is in relation to application of [Section 53A](#) of the T.P Act. It is well settled that the defendant who intends to avail the benefit of this provision must plead that he has taken possession of the property in part performance of the contract. Perusal of the written statement of the first defendant shows that he has not raised such a plea. Pleadings are meant to give to each side, intimation of the case of the other, so that, it may be met to enable courts to

determine what is really at issue between the parties. No relief can be granted to a party without the pleadings. Therefore, it is not open for the first defendant/appellant to claim the benefit available under [Section 53A](#) of the T.P. Act.”

23. In order to substantiate his case, the plaintiff examined himself as PW-1. In his deposition, he stated that he knew defendant No. 1. The defendant No. 1 was the owner of building No. 24/4 and 24/5 and the said building is situated at Jutogh Bazar. As per PW-1, defendant No. 1 entered into an agreement to sell with respect to set No. 24/4 and 24/5 for a total sale consideration of Rs. 37,000/-. As per this witness, he gave Rs 9,000/- as earnest money to defendant No. 1. In lieu of that, a receipt was prepared, marked as Ext. PW-1/A, which was duly signed by defendant No. 1 at encircled 'A'. The same was signed by PW-1 at encircled 'B'. The witnesses, namely Shri Pyare Mohan, Ram Pal Khullar and Shri Jaswant Kumar also signed the said receipt. As per PW-1, he requested defendant No.1 on 19.06.1993 to execute the sale deed in his favour. To that, defendant No. 1 stated that once the mutation was attested in his favour, the sale deed would be executed in favour of PW-1. As per PW-1, defendant No. 1 appended his signatures on Ext. PW-1/A after admitting the contents of the same to be correct. He stated that with respect to sale of set No. 24/5, defendant No. 1 never executed any agreement with any other party. He stated that by unlawful means, defendant No.1 is trying to

sell set No.24/5 to defendant No.2. He stated that he is ready to pay the entire sale consideration of Rs.37,000/- to defendant No.1.

24. In cross-examination, he stated that he is a shopkeeper and for execution of sale, talks for the sale took place between the parties on 19.06.1993 in the evening. During the discussions, in the presence of Pyare Mohan, Ram Pal Khullar, and Shri Jaswant Kumar, Ext. PW-1/B was prepared for his convenience. The disputed building is three-storeyed. Ext. PW-1/A was scribed by Pyare Mohan. Ext. PW-1/B was executed with respect to the middle storey of the building. PW-1 stated that set Nos. 24/4 and 24/5 are in his possession. Defendant No.1 was not his relative, though they both belong to the State of Rajasthan. He stated that he did not enquire whether the mutation had been attested in favour of defendant No.1 or not. The defendants could not extract anything favourable in their defence from his cross-examination.

25. PW-2 is the statement of Piyare Mohan. In his deposition, he stated that he knew the parties. On 19.06.1993, defendant No.1 executed an agreement with respect to set Nos. 24/4 and 24/5 for the sale of the said premises in favour of the plaintiff. The said agreement was entered into in his presence at the shop of Sita Ram Gupta. Apart from him, Ram Pal and Jaswant Kumar were present. The agreement was entered into between Rajesh Kumar and defendant No.1 for a sum of Rs 37,000/-. He stated that he scribed the receipt executed

between the parties at the instance of defendant No.1. Whatever was told by defendant No.1 was incorporated in the receipt. At the encircled 'C' on Ext. PW-1/A, he appended his signature. As per PW-2, the plaintiff paid a sum of Rs 9,000/- as earnest money to defendant No.1.

26. In cross-examination, he stated that the receipt Ext. PW-1/A was prepared in the evening at 8:10 PM in the shop of Sita Ram Gupta. Manohar Lal and Rajesh had called him for its preparation. PW-2 denied the suggestion that when the receipt was prepared by him, at that relevant time, Manohar Lal was not wearing spectacles and that only set No.24/4 was mentioned in the receipt. He denied that the deal was struck only qua set No. 24/4. He denied that when the receipt was prepared, it transpired that qua set No. 24/5 an agreement had already been entered into between defendant No.1 and defendant No. 2 in the year 1991.

27. PW-3, Ram Pal, stated that he knew the parties. As per PW-3, Ext. PW-1/A was written in the shop of Sitaram Gupta in his presence and was scribed by Pyare Mohan, PW-2, on the asking of defendant No. 1 Manohar Lal. After preparing the said receipt, it was duly signed by defendant No. 1. His signature on Ext. PW-1/A is at encircled 'D'. PW-3 stated that after reading the same, Manohar Lal appended his signatures. The plaintiff paid earnest money of Rs 9,000/- to defendant No.1 for the sale of set No. 24/4 and 24/5. It was

agreed that on attestation of mutation in favour of defendant No. 1, the sale deed would be executed in favour of the plaintiff.

28. In cross-examination, he denied the suggestion that an agreement had been entered into between defendant No.1 and defendant No.2 in the year 1991. He further denied that when Ext.PW-1/A was executed, at that time, only set number i.e., 24/4 was inserted. Self-stated that two numbers were written in the document.

29. PW-4, Lal Singh, retired Assistant Engineer from the State Electricity Board, proved the spot map Ext. PW-4/A, which was prepared and signed by him.

30. In order to rebut the case of the plaintiff, defendant No.2/appellant, Smt. Suraksha Puri, entered into the witness box as DW-1. In her deposition, she stated that on 30.10.1991, an agreement was entered into between her and defendant No.1, which is Ext. DW-1/A. The said agreement was entered into with respect to house Nos. 24/5, 24/1 and 24/6. At the time of execution of the agreement, she paid Rs 19,000/- to defendant No.1, and the receipt is Ext. DW-1/B. The said receipt was given to her by Manohar Lal, defendant No.1, on 26.06.1993. As per this witness, Ext. DW-1/A was well within the knowledge of the plaintiff. Rajesh, the plaintiff, had given money to Manohar Lal for the purchase of house No.24/4 only, for which talks were initially going on with Shri Joginder Lal Gupta. She stated that no transaction took place between the plaintiff and defendant No.1 for the

sale of house No.24/5. On 19.06.1993, discussions took place between Rajesh, Piyare Mohan, Joginder Gupta and Jaswant with respect to the sale of house No. 24/4 at 12:00 midnight. As per this witness, two agreements were entered into with defendant No.1. The second agreement was executed on 26.06.1993, the copy of which is Ext. DW-1/C, with respect to house Nos. 24/1, 24/5 and 24/6. At the relevant time, when Ext. PW-1/A was prepared, defendant No.1 was more than 80 years of age and used to wear spectacles. No talks took place between the plaintiff and defendant No.1 for the sale of house No. 24/5 because prior to this, Manohar Lal defendant No.1 had told him that the plaintiff would pay the entire sale consideration for house No.24/4.

31. In cross-examination, she stated that Ext. DW-1/A was prepared in the court premises by a petition writer, and at that time, Jaswant Singh did not accompany her. Ext. DW-1/C was also prepared in the court premises. Rs 19,000/- was taken by the witness from her brother Shyam Lal. At the time Ext. DW-1/C was prepared, Manohar Lal was present. She stated that she did not know who carried out corrections on Ext. DW-1/C. She admitted that she resides as a tenant in set No. 24/1 and 24/6, and that house No. 24/5 is in the possession of the plaintiff Rajesh Kumar.

32. DW-2 is the statement of Jaswant Kumar. In his deposition, he stated that he knew the parties to the lis. Manohar Lal

had entered into an agreement with defendant No.2 and in that regard, Ext.DW-1/C and Ext. DW-1/A were prepared. He stated that he signed Ext.DW-1/A at encircled 'A'. Subsequently, Ext. DW-1/C was prepared, wherein he appended his signatures at encircled 'F' and Pyare Mohan appended his signatures at encircled 'G'. As per DW-2, the stamp papers for preparation of Ext. DW-1/A were purchased by defendant No.1 Manohar Lal. He stated that he did not know the exact date when Ext. DW-1/A was prepared, but it was prepared in the court premises and was signed by Manohar Lal, DW-2, and Sita Ram. He denied that the plaintiff was occupying set No.24/5. He stated that he did not know which set was occupied by Suraksha Puri. Self stated that it was probably set No. 24/4. He admitted that as per Ext. PW-1/A, defendant No.1 agreed to sell set Nos. 24/4 and 24/5 in favour of the plaintiff and for that purpose the plaintiff had paid to him Rs 9,000/-. Self stated that only set No.24/4 was agreed to be sold. He admitted that Ext. PW-1/A was prepared in his presence. Self stated that the set numbers incorporated in the document were incorrect. He could not specify the set numbers of the three-storeyed building.

33. DW-3, Gopal Krishan, deposed that defendant No.1 sold the building from top to bottom in favour of defendant No. 2 and agreement Ext. DW-1/C was prepared in his presence. In cross-examination, he stated that while preparing Ext. DW-1/C, his brother Joginder and Jaswant accompanied him. He stated that he did not

know which set was occupied by defendant No. 2. He admitted that defendant No. 1 had sold the building to his own tenants and further admitted that six rooms in the occupation of Rajesh pertaining to set Nos. 24/4 and 24/5 were adjacent to each other. He could not state whether on 19.06.1993 defendant No.1 sold six rooms to the plaintiff and received Rs 9,000/-. He admitted that in Ext. PW-1/B, the accommodation shown was in possession of the plaintiff.

34. DW-4, Joginder Gupta, stated that he knew the parties and that defendant No. 2 entered into an agreement with defendant No.1 for the purchase of the building. As per DW-4, the agreement was entered into in the year 1991 and thereafter a second agreement was entered into in the year 1993 with respect to set Nos. 24/1, 24/5, and 24/6.

35. In order to substantiate his case, the plaintiff placed on record the agreement to sell/receipt Ext. PW-1/A. A perusal of the same shows that the agreement was entered into on 19.06.1993 between plaintiff Rajesh Kumar and Manohar Lal, defendant No.1, in the presence of witnesses, namely Piyare Mohan, Ram Pal, and Jaswant Kumar.

36. In order to rebut the case of the plaintiff, the defendants relied upon agreement to sell Ext. DW-1/A dated 30.10.1991, which was cancelled on 26.06.1993 and agreement to sell Ext. DW-1/C dated 26.06.1993 for the sale of set No. 24/1, 24/5 and 24/6.

37. The documents placed on record demonstrate that agreement Ext. DW-1/A was cancelled on 26.06.1993. Defendant No.1 executed the agreement to sell/receipt Ext.PW-1/A in favour of the plaintiff on 19.06.1993 with respect to set No. 24/4 and 24/5 for a total sale consideration of Rs 37,000/- upon receipt of earnest money of Rs.9,000/-.

38. It has been fairly conceded by the learned counsel for the defendants that defendant No. 2, in order to enforce agreement to sell Ext. DW-1/A, never initiated any legal proceedings, including a suit for specific performance, against defendant No.1 before the competent court of law.

39. The facts and circumstances demonstrate that when defendant No.2 took no steps for registration of the sale deed, defendant No.1 agreed to sell set Nos. 24/4 and 24/5 to the plaintiff on 19.06.1993 vide Ext. PW-1/A for Rs 37,000/-. Subsequently, to create multiplicity of litigation, the defendants entered into agreement Ext. DW-1/C after the execution of Ext. PW-1/A.

40. The learned senior counsel for the respondent has pointed out that upon execution of Ext. PW-1/A, defendant No. 2 purchased stamp papers on 21.06.1993 to obtain an undue advantage and when this fact came to the knowledge of the plaintiff, he instituted the suit within seven days.

41. Though Mr. Ajay Kumar, learned senior counsel for the appellant objected that the suit was instituted within seven days of the execution of Ext. PW-1/A, but Shri R.K. Bawa, learned senior counsel for respondent No.1, submitted that when it came to the knowledge of the plaintiff that defendant No.2 had purchased stamp papers with a dishonest intention to defeat his rights, the plaintiff was constrained to file the instant suit.

42. The plaintiff has established the due execution of Ext.PW-1/A, which was witnessed by Piyare Mohan, Ram Pal, and Jaswant Kumar. PW-2 Pyare Mohan categorically stated that the agreement was executed in his presence at the shop of Sita Ram Gupta and scribed by him for a sale consideration of Rs 37,000/-, out of which Rs.9,000/- was paid as earnest money to defendant No.1. He identified and proved the signatures on Ext. PW-1/A.

43. PW-3 Ram Pal corroborated that Ext. PW-1/A was scribed by PW-2 on the instructions of defendant No.1 and that defendant No.1 appended his signatures after admitting the contents of the same to be correct. He further testified the payment of earnest money of Rs.9,000/- for the sale of set Nos. 24/4 and 24/5.

44. DW-2 Jaswant Kumar, who was a witness to Ext. PW-1/A as well as Ext. DW-1/A and Ext. DW-1/C, admitted that Ext. PW-1/A was executed in his presence whereby Manohar Lal agreed to sell set

Nos. 24/4 and 24/5 in favour of the plaintiff and that Ext. PW-1/A is correct.

45. The oral evidence in conjunction with the entirety of the facts and circumstances of the case duly proves the execution of Ext. PW-1/A. As per this document, defendant No.1 agreed to sell set Nos.24/4 and 24/5 in favour of the plaintiff for Rs.37,000/- and out of the same, Rs.9,000/- was paid by the Plaintiff as earnest money. As rightly pointed out by the learned Senior Counsel for respondent No.1 that no reliance can be placed on Ext.DW-1/A, as the said document stood cancelled on 26.06.1993. Further, Ext. DW-1/C is dated 26.06.1993, which is subsequent to the execution of Ext. PW-1/A dated 19.06.1993.

46. The defendants have half-heartedly taken a plea that Ext. PW-1/A was obtained fraudulently and by dishonest means, as defendant No.1 who was an old aged person, was not wearing spectacles at the time of execution of said agreement Ext. PW-1/A, and was not informed that the document pertained to set No.24/5. However, the plea of fraud and misrepresentation was neither specifically pleaded with full particulars in the written statement nor substantiated by cogent evidence.

47. The defendants failed to examine defendant No.1 Manohar Lal, the star witness of this case, during his lifetime. Though the written statement was signed by both defendants, but they have

not been able to explain the reason why defendant No.1, who was the main person to have deposed about the execution of Ext. PW-1/A, Ext. DW-1/A and Ext.DW-1/C, has been withheld by them from the witness box.

48. Not only this, during the pendency of the suit, defendant No.1 had expired, but his legal representatives have failed to contest the proceedings. Even before this Court, the legal heirs had chosen not to contest the proceedings. Therefore, it can be safely concluded that Plaintiff has been able to establish and prove Ext.PW-1/A whereby defendant No. 1 had agreed to sell the suit property consisting of Set Nos. 24/4 and 24/5 for a total sale consideration of Rs. 37,000/- in favour of the Plaintiff. Thus, the defendants have failed to establish the plea of fraud or misrepresentation and no reliance can be placed on bald assertions.

49. The evidence on record indicates that defendant No.1 agreed to sell sets of the building which were in occupation of his tenants and that set No. 24/5 was already in the possession of plaintiff prior to the execution of Ext. PW-1/A and Ext. DW-1/C. Therefore, the learned courts below concurrently came to the conclusion that on the basis of Ext. PW-1/A, the plaintiff is entitled to a decree for specific performance of the contract.

50. The Hon'ble Apex Court has repeatedly held that the scope of interference by the High Courts especially while exercising

power under Section 100 of the Code of Civil Procedure is very limited. The High Courts should not interfere in concurrent findings of facts until and unless the findings as returned by the Courts below are perverse or without any evidence.

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

52. Reference in this regard is made to the judgment of the Hon'ble Apex Court in ***Hero Vinoth (minor) vs. Seshammal, (2006) 5 SCC 545*** wherein it has been held as under:

“18. It has been noted time and again that without insisting for the statement of such a substantial question of law in the memorandum of appeal and formulating the same at the time of admission, the High Courts have been issuing notices and generally deciding the second appeals without adhering to the procedure prescribed under Section 100 of the CPC. It has further been found in a number of cases that no efforts are made to distinguish between a question of law and a substantial question of law. In exercise of the powers under this section in several cases, the findings of fact of the first appellate court are found to have been disturbed. It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation. Being a substantive statutory right, it has to be regulated in

accordance with law in force at the relevant time. The conditions mentioned in the section must be strictly fulfilled before a second appeal can be maintained and no court has the power to add or to enlarge those grounds. The second appeal cannot be decided on merely equitable grounds. The concurrent findings of facts will not be disturbed by the High Court in exercise of the powers under this section. Further, a substantial question of law has to be distinguished from a substantial question of fact. This Court in Sir Chunilal V. Mehta and Sons Ltd. v. Century Spg. & Mfg. Co. Ltd. (AIR 1962 SC 1314) held that : "The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.

" 19. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences of fact are possible, one drawn by the lower appellate court will not be interfered by the High Court in

second appeal. Adopting any other approach is not permissible. The High Court will, however, interfere where it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at by ignoring material evidence.

20. to 22 xx xxxxxx

23. To be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law "involved in the case" there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis."

53. Similarly, the Hon'ble Supreme Court in **Annamalai vs. Vasanthi, 2025 INSC 1267**, has held as follows: -

"16. Whether D-1 and D-2 were able to discharge the aforesaid burden is a question of fact which had to be determined by a court of fact after appreciating the evidence available on

record. Under CPC, a first appellate court is the final court of fact. No doubt, a second appellate court exercising power(s) under Section 100 CPC can interfere with a finding of fact on limited grounds, such as, (a) where the finding is based on inadmissible evidence; (b) where it is in ignorance of relevant admissible evidence; (c) where it is based on misreading of evidence; and (d) where it is perverse. But that is not the case here.

17. In the case on hand, the first appellate court, in paragraph 29 of its judgment, accepted the endorsement (Exb. A-2) made on the back of a registered document (Exb. A-1) after considering the oral evidence led by the plaintiff appellant and the circumstance that signature(s)/thumbmark of D-1 and D-2 were not disputed, though claimed as one obtained on a blank paper. The reasoning of the first appellate court in paragraph 29 of its judgment was not addressed by the High Court. In fact, the High Court, in one line, on a flimsy defense of use of a signed blank paper, observed that genuineness of Exb. A-2 is not proved. In our view, the High Court fell in error here. While exercising powers under Section 100 CPC, it ought not to have interfered with the finding of fact returned by the first appellate court on this aspect; more so, when the first appellate court had drawn its conclusion after appreciating the evidence available on record as also the circumstance that signature(s)/thumbmark(s) appearing on the document (Exb.A2) were not disputed. Otherwise also, while disturbing the finding of the first appellate court, the High Court did not hold that the finding returned by the first appellate court is based on a misreading of evidence, or is in ignorance of relevant evidence, or is perverse. Thus, there existed no occasion for the High Court, exercising power under Section 100 CPC, to interfere with the finding of the first appellate court regarding payment of additional Rs. 1,95,000 to D-1 and D-2 over and above the sale consideration fixed for the transaction.

18. Once the finding regarding payment of additional sum of Rs.1,95,000 to D-1 and D-2 recorded by the first appellate court is sustained, there appears no logical reason to hold that

the plaintiff (Annamalai) was not ready and willing to perform its part under the contract particularly when Rs. 4,70,000, out of total consideration of Rs. 4,80,000, was already paid and, over and above that, additional sum of Rs.1,95,000 was paid in lieu of demand made by D-1 & D-2. This we say so, because an opinion regarding plaintiff's readiness and willingness to perform its part under the contract is to be formed on the entirety of proven facts and circumstances of a case including conduct of the parties. The test is that the person claiming performance must satisfy conscience of the court that he has treated the contract subsisting with preparedness to fulfill his obligation and accept performance when the time for performance arrives."

54. No other point was raised by the learned counsel for the parties.

55. Both the Courts below have rightly appreciated the point in controversy after considering the oral as well as documentary evidence placed on record. The substantial questions of law are answered accordingly.

56. In view of above, the present appeal being devoid of any merit deserves to be dismissed. Ordered accordingly. Pending application(s), if any, also stands disposed of.

(Romesh Verma)
Judge

30th September, 2026
(vt)