

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**RSA No. 192 of 2008****Reserved on: 18.07.2026****Date of decision: 12.08.2026**

Om Prakash (deceased) through LRs

...Appellant

Versus

Jagan Nath

...Respondent

*Coram:****The Hon'ble Mr. Justice Romesh Verma, Judge.****Whether approved for reporting?*¹ YesFor the appellant : Mr. Bhupender Gupta, Senior Advocate
with Mr. Pranjal Munjal, Advocate.For the respondent : Mr. Ajay Kumar, Senior Advocate with
Ms. Vanshika Sharma, Advocate.**Romesh Verma, Judge:**

The instant regular second appeal arises out of the judgment and decree as passed by learned District Judge, Kangra at Dharamshala, dated 22.02.2008, whereby the appeal filed by the defendant was dismissed, and the judgment and decree as passed by the learned Sub Judge, First Class, Dharamshala dated 23.3.1982 was affirmed, whereby the suit filed by the plaintiff for declaration and in the alternative for possession was ordered to be decreed.

2. The facts as emerge in the present case are that the plaintiff-respondent filed a suit for declaration in the court of learned Sub-Judge First Class, Dharamshala on 12.8.1977. It was averred in the plaint that he is the owner-in-possession of the suit land and the

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

defendant who was looking after the suit property as a caretaker in his absence and without his consent got the entry of the suit land recorded in his favour as tenant in collusion with the revenue staff. It is the case of the plaintiff that the defendant was never inducted as a tenant, and the defendant, in collusion with the revenue authorities, has effected the changes in the same.

3. The plaintiff further prayed for the issuance of permanent prohibitory injunction restraining the defendant from interfering with his possession over the suit land and in the alternative, he prayed for the possession of the suit land.

4. The suit was contested by the defendant by filing written statement. Preliminary objections with respect to the maintainability, limitation, jurisdiction, cause of action, etc., were raised by the defendant. All the averments as made in the plaint were refuted and it was stated that the defendant has acquired proprietary rights over the suit land and the plaintiff has ceased to be the owner of the same. It was stated that the plaintiff is not in possession of the suit land. As there is a relationship of landlord and tenant *inter se* the parties, therefore the court does not have the jurisdiction to entertain the suit, more so in view of the provisions of HP Tenancy and Land Reforms Act (for short, "Act"), there is a bar to the present suit.

5. The learned trial Court framed the issues on 26.05.1978 in the following manner:

1. Whether the plaintiff is owner in possession of the suit property? OPP
2. Whether the suit is not maintainable in the present form? OPD
3. Whether the suit is within time? OPP
4. Whether act and conduct of the plaintiff is bar to the present suit? OPD
5. Whether this Court has no jurisdiction to try this suit? OPD
6. What is the effect of H.P. Tenancy and Land Reforms Act on the present suit? OPD
7. Whether the defendant is in possession of the suit land on payment of rent? OPD
8. If Issue No.7 is proved, whether the defendant is not the tenant under plaintiff? OPD
9. Relief.

6. The learned trial court directed the respective parties to adduce evidence in support of their contentions and vide its judgment and decree dated 23.03.1982, the learned trial court decreed the suit for possession in favour of the plaintiff and against the defendant. Against the judgment as passed by the learned trial Court, the defendant preferred an appeal bearing Civil Appeal No. 179 of 1982 titled as *Om Parkash vs. Jagan Nath* whereby the judgment and decree of the learned trial Court was set aside by the learned District Judge on the ground that the Civil Court did not have the jurisdiction to entertain the suit in view of the law laid down by the Court in

Chuhniya Devi vs. Jindu Ram 1991 (1) Sim.L.C. 223 and consequently he accepted the appeal and ordered the return of plaint.

7. Feeling aggrieved against the same, the plaintiff filed Regular Second Appeal No.32 of 1996 before this Court. Vide judgment and decree dated 03.09.2007, this Court accepted the appeal as filed by the plaintiff and the judgment and decree dated 05.01.1994 as passed by the learned District Judge was ordered to be set aside and the appeal was remanded to the concerned District Judge to decide the appeal afresh after holding that the Civil Court has got the jurisdiction to determine the issue between the parties.

8. After the remand of case the learned first appellate Court adjudicated the appeal afresh and vide its judgment and decree dated 22.02.2008, the learned District Judge affirmed the findings of trial Court and dismissed the appeal preferred by the defendant/appellant.

9. Feeling aggrieved, the defendant/appellant has approached this Court by invoking the provisions of Section 100 of the CPC by filing the instant Regular Second Appeal.

10. The appeal was admitted by this Court on 12.3.2009 on the following substantial questions of law:

1. Whether Lower Appellate Court has committed grave error of jurisdiction in failing to appreciate true import of the additional evidence produced by defendant-

appellant i.e. Ex A-1 to Ex. A-13? Has not Lower Appellate Court discarded such documents erroneously and in a perverse manner only on the ground that the substitution of entry of the defendant-appellant recording him to be a tenant over the suit land were not in accordance with law? Was not presumption of truth attached to the continuance of revenue entries rebutted by plaintiff-respondent by leading cogent and satisfactory evidence?

2. Whether findings of both the Courts below that defendant-appellant is not the tenant over the suit land are erroneous and perverse and are the result of misreading the contents of Ex. PW-B to Ex. PW-1/L and also the fact that the defendant-appellant belongs to Mahajan community?

11. It is contended by Mr. Bhupender Gupta, learned Senior Counsel, duly assisted by Mr. Pranjal Munjal, 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 submits that both the Courts below have erred while decreeing the suit filed by the plaintiff-respondent, which findings stood affirmed by the learned first appellate Court. He contended that the defendant has been able to establish that he was inducted as a tenant over the suit land by the father of the plaintiff. Therefore, by virtue of the provisions of HP Tenancy and Land Reforms Act, he acquired the ownership over

the suit land. Therefore, no relief could have been granted to the plaintiff in the attending facts and circumstances of the case. He further submits that after accepting the present appeal, the suit as filed by the respondent/plaintiff deserves to be dismissed.

12. On the other hand, Mr. Ajay Kumar, learned Senior Counsel, duly assisted by Ms. Vanshika Sharma, learned counsel for the respondent, has defended the impugned judgments and decrees and he submits that the plaintiff/respondent is fighting for his cause since 1977 and for the last more than 49 years he has been deprived of the fruits of the property for which he is entitled under the law. He further submits that there are concurrent findings of the fact as returned by the learned courts below, therefore, while invoking the provisions of Section 100 of the CPC, this Court should not interfere in the well-reasoned judgments and decrees passed by both the Courts below.

13. I have heard the learned counsel for the parties and have carefully perused the record.

14. The plaintiff/respondent filed the suit for declaration, injunction and possession before the learned trial court on the ground that the defendant was never inducted as a tenant over the suit land and the said entries as have been incorporated in the revenue records are false, incorrect, and non-binding on the rights of the plaintiff and

the same has been depicted in the revenue records on behalf of the defendant in league with the revenue authorities.

15. On the other hand, the defendant has specifically stated that he was inducted as tenant by the father of the plaintiff and by virtue of provisions of the Act, he has become owner of the suit land.

16. In order to substantiate his case, the plaintiff, Jagan Nath, examined himself as PW-1. In his deposition, he stated that the suit land devolved upon him from his father, late Shri Brahm, and that he is in possession of the suit land. He stated that earlier Brij Lal was earlier the tenant over the suit land, but he later relinquished possession, after which his father and PW-1 cultivated the suit land. He stated that he never gave the suit land to the defendant for cultivation. He further stated that he used to work in Kullu earlier and his father resided with him and that his father had asked the defendant to look after and maintain the suit land. He stated that the defendant had written letters Ext. A, B, C, D, E, F, G, H, I, & J regarding the maintenance of the suit land and that in the previous year, the defendant forcibly took possession of the suit land. He stated that the defendant is a shopkeeper and that the name of his brother is Uttam Chand. Further stated that Uttam Chand was appointed as power of attorney at the instance of the defendant.

17. In cross-examination, PW-1 stated that Brij Lal stopped cultivating the land about 6 years ago. He stated that he does not know that after relinquishing the land by Brij Lal, whether the land was cultivated by Mangal. He denied that the suit land was in the possession of Mangal and thereafter came into the possession of the defendant. He denied that the defendant used to pay rent. He stated that he does not know the names of the persons who used to cultivate the suit land, but after the death of his father, the suit land was cultivated through the defendant. He stated that they never executed any power of attorney in favour of the defendant. In his deposition, he stated that the defendant had not kept the bullocks.

18. PW-2 is the statement of Jaishi Ram, who in his deposition stated that the suit land was owned by Brahmu alias Balaram. He stated that the suit land used to be cultivated by Brij Lal, who left the same about 5-6 years ago and thereafter Brahmu himself cultivated the land. He stated that the suit land was never cultivated by the defendant and that about 4-5 months ago, the defendant put up barbed wire and forcibly occupied the suit land. He stated that he does not know how many crops were sown by Mangal, but Brahmu used to cultivate the suit land through Mangal.

19. PW-3 is the statement of Munshi Ram, who stated in his deposition that the suit land was owned by Brahmu alias Balaram, who has expired and that the plaintiff is the owner of the suit land. He

stated that Brij Lal was tenant over the suit land and later he left the suit land in favour of Brahmu. He stated that he never saw that Brahmu had inducted the defendant as his tenant. In cross-examination, he stated that Brahmu used to reside in Kullu and cultivated the suit land himself with the help of labourers. He stated that the defendant has been cultivating the suit land for about five to six years, but never gave rent to the owners.

20. PW-4 is the statement of Bachitter Singh. In his deposition, he stated that he knew the parties and that the suit land was owned by Brahmu. He stated that earlier this suit land used to be cultivated by Brij, who left possession long ago and thereafter Mangal cultivated the suit land for few days. He stated that Mangal cultivated the suit land at the instance of Om Prakash, the defendant. He stated that Brahmu had told him that he had kept Om Prakash to maintain the suit property. Brahmu resided in Lanj for some period and thereafter used to reside in the house of his son at Kullu. When Brahmu resided at Lanj, he cultivated the suit land with the help of labourers.

21. In cross-examination, he stated that he cannot say how much land Brahmu owned and possessed at Lanj. He stated that the settlement remained in operation for about three to four years. He stated that he does not know that the possession was recorded in the revenue records. He stated that he cannot tell whether Om Prakash was inducted as tenant over the suit land.

22. PW-5 is the statement of Satya Prakash, who stated that he has been residing in Lanj for more than 18 years and knew the parties. He stated that the suit land was owned by Brahmu and thereafter by his son, Jagan Nath. He stated that Brij Lal left possession of the suit land and after that Brahmu cultivated the same himself through labourers. He stated that son of Brahmu was working at Kullu and Brahmu left for Kullu to reside with him and in his absence, the defendant transferred the entire property in his own name. He stated that from 1972 till Brahmu died, Brahmu did not visit village Lanj. He stated that at the time of the settlement, Brahmu and his son Jagannath (the present plaintiff) were not present at Lanj. He stated that prior to Brahmu's death, Brahmu told him that Om Prakash had not given the details of the crops cultivated over the suit land. In cross-examination, he admitted that he was having a dispute with the present defendant.

23. In order to rebut the evidence of the plaintiff, the defendant, Om Prakash, entered the witness box as DW-1. He stated that the disputed land is owned by Brahmu and that he used to cultivate the same. He stated that he has been cultivating the suit land for more than six years and that Brahmu had given him the suit land to cultivate. He stated that prior to him, Mangal used to cultivate the land, and that he used to pay rent to the owner. He stated that Brahmu never remained in possession after Mangal left the possession of the

suit land. He stated that he never remained manager-cum-caretaker for the father of the plaintiff. He stated that Brahmu had executed a power of attorney in favour of Uttam Chand to maintain the suit land. He stated that he never left possession and is a tenant over the land. He added that about four to five years ago, settlement operations took place in the village, he was in possession at that time, and the same was incorporated in the revenue record.

24. In his cross-examination, he stated that Brahmu never came to his house in village Lanj after August 1973. He stated that when Brahmu came to the village in August 1973, Mangal Singh was cultivating the suit land. He stated that he and Brahmu never went to the Patwari to make a *rapat* regarding possession and that his possession was incorporated during the settlement operation. He stated that he does not have rent receipts and that Brahmu owned 15 kanals of land at Lanj. He stated that prior to the settlement, the tenant used to cultivate the suit land and that settlement operation started in the year 1975. He admitted that he had written letters dated 19.07.1974 (Ext. DW-1/A), 30.01.1974 (Ext. DW-1/B), 17.04.1975 (Ext. DW-1/C), and 02.08.1974 (Ext. DW-1/D), which were signed by him. He admitted that said letters were written by him to Brahmu, the father of the plaintiff. He also admitted that the postcard dated 21.03.1972 (Ext. DW-1/E), card dated 06.04.1972 (Ext. DW-1/F), letter dated 23.01.1973 (Ext. DW-1/G), letter dated 12.01.1973 (Ext. DW-1/H),

letter dated 22.05.1973 (Ext. DW-1/I), letter dated 10.12.1973 (Ext. DW-1/J), letter dated 25.12.1973 (Ext. DW-1/K), letter dated 12.11.1973 (Ext. DW-1/L), letter dated nil (Ext. DW-1/M) and card dated 03.10.1972 (Ext. DW-1/N) were written and signed by him to Brahmu. He admitted that these letters were written to provide information regarding the maintenance of the suit land. He admitted that he left the maintenance of the suit land in the year 1974. He stated that Mangal cultivated the suit land for about three years and that Brahmu himself used to come to his house to receive rent from Mangal. He stated that Brahmu was not present at the time of the settlement. He stated that he is a shopkeeper and that the suit land is adjacent to house of Brahmu.

25. DW-2 is the statement of Beli Ram, who stated that he knew the defendant, Om Prakash, and that the suit land has been in Om Prakash's possession for the last six years. DW-2 appeared in the witness box on 22/8/1979. In cross-examination, he stated that he does not know in what capacity the defendant cultivates the suit land. He stated that after Mangal left possession, Brahmu gave the suit land to the defendant, Om Prakash, however, no written document was executed between the parties. He stated that no rent was paid by the defendant in his presence. He stated that Om Prakash is a cloth merchant and that he does not know whether Om Prakash used to look after/maintain the land of Brahmu.

26. DW-3 is the statement of Uttam Chand. In his testimony, he stated that Brahmua appointed him as his general power of attorney on 04.12.1974(Ext. DW-3/A). As per the power of attorney, Brahmua entrusted the maintenance of the suit land to DW-3, Uttam Chand. He stated that, as power of attorney, Om Prakash had given the crops to him and thereafter rent, which he used to pay to the plaintiff. He stated that in the year 1977, the plaintiff, Jagannath, came to the village and he paid him a sum of Rs. 280/- as rent.

27. In cross-examination, he admitted that he did not take receipt for the rent amounting to Rs. 280/-. He stated that the suit land was never given to the defendant for cultivation in his presence.

28. DW-4 is Mangal Ram, who stated that he knew the parties. He stated that he cultivated the suit land for about three years and paid rent to the owners and that Brijua cultivated the suit land prior to him. He stated that Brahmua gave possession of the suit land to the defendant in his presence and the defendant has been in possession since then.

29. In cross-examination, he admitted that the defendant, Om Prakash, is a shopkeeper who also cultivates land. He admitted that the defendant had not kept bullocks and cultivates the land with the help of labourers. He stated that no rent was paid by the defendant to

the owner in his presence and he does not know whether the defendant used to look after/maintain the land of Brahmu.

30. DW-5 is Ramesh Chand, who reiterated the statements of DW-1 to DW-4. He stated that rent was never paid by the defendant to the owner in his presence. He stated that the defendant is a shopkeeper and he has not kept bullocks. He stated that the defendant paid rent in the year 1977, but the receipt was not prepared in his presence.

31. The testimony of DW-1, Om Prakash, the defendant, establishes the case of the plaintiff, wherein it is categorically stated that the defendant was never inducted as a tenant and was just a caretaker of the suit land, appointed as such by the father of plaintiff.

32. In his written statement and examination-in-chief, the defendant tried to prove that he never remained caretaker for Brahmu over the suit land; however, in cross-examination, his stand was totally falsified. In his cross-examination, he admitted that he stopped maintaining the suit land in the year 1974. He categorically admitted that he wrote letters to Brahmu exhibited as Ex. DW-1/A to Ex. DW-1/N. The perusal of Ext. DW-1/A shows that in pursuance to the letter as sent by the father of the plaintiff dated 17.07.1974, the defendant responded to him that in the house of the predecessor of the plaintiff, one contractor is living in a room and the second room has been given

to his brother Hukam Chand. He stated that on account of giving the room to Hukam Chand, the brother of the defendant, his house shall be taken care of and the same shall be maintained properly. He further stated that alongwith Hukam Chand, his wife is also residing with him. Stated that in the vacant area, the grass grows very rapidly and Hukam Chand and his wife clear the grass in a proper manner. Till winters, his house shall be prepared. In the letter, it has been written that settlement of the area is going to commence after the monsoon. He has stated that he told Faqirghir that Bala Ram had told him that in case he is agreeable to Rs.150/- as 'Chakota' of the land on the other side, in that event, he can cultivate the same, however, he did not give any response. He further stated that in the adjoining area, maize was sown and Hukam Chand had done 'gudai' of maize. The perusal of this letter leaves no manner of doubt that a person, who is looking after the property of Bala Ram had written letter to him.

33. To the similar extent is the letter Ext. DW-1/B whereby he (defendant) has stated that maize of Bala Ram was weighed and it came to be about 3 'mann' and out of the same, some maize was given to Palu Ram and remaining was sold at the rate of rupees 16/- per 'mann'.

34. In the letter Ext. DW-1/D, he has stated that in the winters, when he (Bala Ram) shall be reaching home, the repairs of the house will be done in your presence. He stated that the house was being

cleaned by the wife of Hukam Chand in a proper manner. He also stated that settlement is going to commence and his presence is must during that settlement operation as the settlement officials incorporate the name of a person, who is in cultivating possession of the property.

35. In the letter Ext. DW-1/H, he has stated that alongside the house of Bala Ram, construction of the kitchen has been started. In one of the rooms, the Contractor is residing and Bala Ram should respond to his letter where the fencing has to be erected on the adjoining land.

36. Exhibit DW-1/N also demonstrates that being a caretaker, the defendant had written letters to Shri Bala Ram, father of the plaintiff. These letters are very specific, categorical and unambiguous and perusal of the same leaves no doubt in the mind that all these letters have been written by the Manager/Caretaker of the suit property and all the day-to-day activities and directions were sought from late Shri Bala Ram in order to manage and look after the suit land/property.

37. The letters which have been exhibited and admitted by the defendant in his cross-examination clearly clinches the entire controversy and establishes that the defendant was a caretaker of the suit land. The story as projected by the defendant that he was inducted as a tenant is falsified by his own statement as DW-1. He admitted in his statement that he is a shopkeeper. This fact has been

substantiated by DW-2 (Beli Ram), DW-4 (Mangal Ram) and DW-5 (Ramesh Chand).

38. Learned courts below have rightly held that the defendant is a shopkeeper and as admitted by his own witnesses, the defendant cultivated the suit land with the help of labourers and does not have the bullocks.

39. The defendant has relied on a copy of the Khasra Girdawari, dated 20.04.1976 (Ext D-12). On the strength of the same, the defendant has put forth a defence that he was inducted as a tenant and subsequently acquired proprietary rights to become the owner of the suit land.

40. The Himachal Pradesh Land Records Manual 9.8 prescribes the entry of crops and rights in the following manner:

“9.8 The crops will be entered in the Khasra girdawari, as the inspection proceeds, in the column provided for the purpose. The changes in rights, rents and possession will be noted in the appropriate column in pencil. And, where the boundaries or area of a field have changed in such a manner as to require a correction of the field map, the patwari will make a rough measurement, sufficient for the crop entries. All changes in rights, rents and possession shall be recorded by the patwari in pencil and by putting a cross in pencil in columns 12, 16, 20, 24, & 28 of Khasra girdawari in accordance with Govt. instructions issued vide letter No. 10-5173-11, dated 4.9.80. As per these instructions, the patwari will give information of such

changes to the Tehsildar Naib Tehsildar as the case may be. The Tehsildar Naib-Tehsildar will inquire and give reasonable opportunity of being heard to the parties. The inquiry should be completed within 3 months and the entries will be made in Khasra girdawari according to the orders passed by the Revenue Officers after entering in his diary.

41. The procedure has been prescribed with respect to the entry of the crops in the Khasra Girdawari.

42. Admittedly, in the present case, the said procedure has not been followed by the authorities and the said entry does not carry any weightage to establish that the defendant was ever inducted as a tenant by the father of the plaintiff, late Shri Brahm.

43. The creation of a tenancy is a bilateral agreement *inter se* the parties. In the absence of an agreement, it cannot be inferred that defendant was inducted as a tenant over the suit land. The entry which has been incorporated in the Khasra Girdawari is contrary to Clause 9.8 of the Himachal Pradesh Land Records Manual, which deals with the change of entry in Khasra Girdawari.

44. The law is well settled that presumption of truth is attached to the jamabandis. The question arises whether in the present case, the entry which was incorporated in the 'khasra girdawari' was inserted in a legal manner by following the procedure as envisaged under the Himachal Pradesh Land Records Manual.

45. Para 8.15 of the Himachal Pradesh Land Records Manual provides that the status of a landowner or tenant cannot be altered except by agreement of all the parties or in consequence of a decree or order or in accordance with facts proved or admitted to have occurred in accordance with Section 38 of the Himachal Pradesh Land Revenue Act.

46. Para 9.8 of the Himachal Pradesh Land Records Manual provides that all changes should be recorded by the Patwari in pencil and by putting a cross in pencil in columns Nos. 12,16, 20, 24 and 28 of 'khasra girdawari'. The Patwari is then to give information of such changes to the Tehsildar/Naib Tehsildar, who will inquire into the matter and after giving reasonable opportunity of being heard to the parties, complete the inquiry and then pass an order after entering it in the diary.

47. Section 38 of the Himachal Pradesh Land Revenue Act reads as follows:

“38. Restrictions on variations of entries in records.

-Entries in records-of-rights or in [periodical] *[Substituted for word 'annual' section 11 (1) of H.P. Act No. 21 of 1976.]* records, except entries made in [periodical] *[Substituted for word 'annual' section 11 (1) of H.P. Act No. 21 of 1976.]* records by patwaries under clause (a) of section 36 with respect to undisputed acquisitions of interest referred to in that section, shall not be varied in subsequent records otherwise than by –

(a) making entries in accordance with facts proved or admitted to have occurred;

4[(aa) making entries in respect of Government land in accordance with the order made by the State Government or by a Revenue Officer not below the rank of the Collector;]

(b)making such entries as are agreed to by all the parties interested therein or are supported by a decree or order binding on those parties; and

(c)making new maps where it is necessary to make them.”

48. This Section also makes it clear that entries in the revenue record can be changed only on the basis of admitted facts or facts proved and, therefore, hearing is necessary before making a change in the revenue record.

49. Admittedly, in the present case, the procedure as prescribed was not followed while changing the entry in favour of the defendant. Prima facie, there appears to have been a motive to effect this change in the year 1976, as by that time, the tenancy rights had acquired significant value in view of the land reforms legislation, which came in favour of the tenants.

50. Had there been any inquiry as envisaged in the aforesaid instructions, the plaintiff certainly would have been associated in that inquiry and the change, if any, would have been only effected after affording him a reasonable opportunity of being heard.

51. In this view of the matter, the change of the tenancy rights in Khasra Girdawari in favour of the defendant could not legally create any tenancy rights, especially when the change of Girdawari in his name as tenant was illegal, unsustainable, and against the mandatory instructions issued by the government in this behalf.

52. Even otherwise, the tenancy rights cannot be taken away from one person and created in favour of other person in the manner as it has been done in the present case. Certainly, it requires a legal procedure, which in the present case, has not at all been followed.

53. The learned counsel for the respondent has relied upon the judgment of this Court in ***Tulsa Singh versus Agya Ram, 1995(1) S.L.J. 428***, wherein it was observed as under:

"24. Reference can safely be made at this stage to clause 9.8, page 197 of the Himachal Pradesh Land Records Manual which deals with the change of entry in Khasra Girdwari. For the sake of convenience this clause is reproduced hereunder:

"The crops will be entered in the Khasra girdwari, as the inspection proceeds, in the column provided for the purpose. The change in rights, rents and possession will be noted in the appropriate column in pencil. And, where the boundaries or area of a field have changed in such a manner as to require a correction of the field map, the patwari will make a rough measurement, sufficient for the crop entries. All changes in rights, rents and possession shall be recorded by the patwari in pencil and by putting a cross in pencil in columns 12, 16, 20, 24 and 28 of Khasra girdawari in accordance with Government instructions issued vide letter No. 10-5/73-II, dated 4-9-80. As per these instructions, the parwari will give information of such changes to the Tehsildar/Naib-Tehsildar as the case may be. The Tehsildar/Naib-Tehsildar will inquire and give reasonable opportunity of being heard to the parties. The inquiry should be completed within 3 months and the entries will be made in

Khasra girdwari according to the orders passed by the Revenue officers after entering in his diary."

54. The learned senior counsel for the appellants has vehemently and strenuously argued that application which was filed by the defendant/appellant before the learned first appellate court was allowed and the documents were ordered to be placed on record as Ext. A1 to A13.

55. A perusal of these documents shows that earlier, Jagan Nath was shown as the owner of the suit land with the defendant in possession as a tenant. Thereafter, after acquiring the proprietary rights, the defendant is being shown owner of the suit land.

56. There is no dispute qua the said fact. However, in the present case, the question which has to be answered by the defendant is whether the change of entry in the Khasra Girdawari effected in 1976 was legal and valid. As observed earlier, the said entry has been incorporated without following the mandatory provisions of the law, especially the instructions as laid down by the government and has rightly been disbelieved by both the learned courts below.

57. Once the change of entry in the Khasra Girdawari is held to be illegal, null and void by this Court, then the subsequent entries in favour of the defendant do not carry any weight or do not have any presumption of truth in the eyes of law.

58. Even otherwise, once the HP Tenancy and Land Reforms Act came into operation in the year 1974, in common parlance, there was no occasion for the father of the plaintiff to have inducted the defendant as tenant, as by virtue of the provisions of law, certainly the defendant would have been conferred the proprietary rights later on.

59. The learned courts below have thrashed the entire oral as well as documentary evidence placed on record and rightly decreed the suit as filed by the plaintiff for possession.

60. In the present case, the record reveals that the civil suit for declaration and injunction was filed by the plaintiff in the year 1977, and despite passing of more than 49 years, the plaintiff has been running from pillar to post to get the relief in his favour.

61. In the light of admission by the defendant that letters Ext. DW-1/ A to Ext. DW-1/N were written and signed by him, it clearly shows that he was merely a caretaker of the suit land. No rights were transferred to him and he took advantage of the absence of the plaintiff and his father, who were residing at Kullu, to change the revenue record in league with the revenue authorities behind their back. Thus, the entry of tenancy was incorporated in an illegal manner.

62. It is a well-settled principle of law that caretaker or servant can never acquire interest in the property, irrespective of his long possession. The Hon'ble Apex court has repeatedly held that the

caretaker or the servant has to give the possession forthwith on demand.

63. In present case, the defendant has no valid or subsisting right qua the suit land. Once, he has failed to establish that there was any bilateral tenancy agreement *inter se* the parties, his possession over the suit land is without any right, title or interest.

64. A caretaker or agent holds the property of the principal only on behalf of the principal and acquires no right or interest whatsoever for himself in such a property, irrespective of his possession. This proposition of law has been laid down by the Hon'ble Apex court in ***Maria Margarida Sequeira Fernandes and others vs. Erasmo Jack de Sequeira(dead) through LRs***, 2012 (5) SCC 370, which reads as follows:

“94. This Court in [Puran Singh v. The State of Punjab](#) (1975) 4 SCC 518 held that:

“12..... an occupation of the property by a person as an agent or a servant at the instance of the owner will not amount to actual physical possession”.

95. This Court in [Mahabir Prasad Jain](#) (supra) has held that the possession of a servant or agent is that of his master

or principal as the case may be for all purposes and the former cannot maintain a suit against the latter on the basis of such possession.

96. In [Sham Lal v. Rajinder Kumar & Others](#) 1994 (30) DRJ 596, the High Court of Delhi held thus:

"12. On the basis of the material available on record, it will be a misnomer to say that the plaintiff has been in 'possession' of the suit property. The plaintiff is neither a tenant, nor a licensee, nor a person even in unlawful possession of the suit property. Possession of servant is possession of the real owner. A servant cannot be said to be having any interest in the suit property. It cannot be said that a servant or a chowkidar can exercise such a possession or right to possession over the property as to exclude the master and the real owner of the property from his possession or exercising right to possession over the property.

13. Possession is flexible term and is not necessarily restricted to mere actual possession of the property. The legal conception of possession may be in various forms. The two elements of possession are the corpus and the animus. A person though in physical possession may not be in possession in the eye of law, if the animus be lacking. On the contrary, to be in possession, it is not necessary that one must be in actual physical contact. To gain the complete idea of possession, one must consider

(i) the person possessing,

(ii) the things possessed and,

(iii) the persons excluded from possession.

A man may hold an object without claiming any interest therein for himself. A servant though holding an object,

holds it for his master. He has, therefore, merely custody of the thing and not the possession which would always be with the master though the master may not be in actual contact of the thing. It is in this light in which the concept of possession has to be understood in the context of a servant and & master."

The ratio of this judgment in [Sham Lal](#) (supra) is that merely because the plaintiff was employed as a servant or chowkidar to look after the property, it cannot be said that he had entered into such possession of the property as would entitle him to exclude even the master from enjoying or claiming possession of the property or as would entitle him to compel the master from staying away from his own property.

97. Principles of law which emerge in this case are crystallized as under:-

- 1. No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.*
- 2. Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.*
- 3. The Courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.*
- 4. The protection of the Court can only be granted or extended to the person who has valid, subsisting rent*

agreement, lease agreement or license agreement in his favour.

5. The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.

65. As has been held by the learned Courts below, that the status of the defendant is merely that of a caretaker in the suit land, therefore, his possession is unauthorized and illegal. The plaintiff, being the title holder and owner of the same, is entitled to get decree of possession.

66. In the present case, there are concurrent findings of fact 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 learned first appellate court

67. Reference in this regard is made to the judgment of the Hon'ble Apex Court in ***Navaneethammal vs. Arjuna Chetty AIR 1996 SC 3521***, wherein it has been held as under:

“10. This Court, time without number, pointed out that interference with the concurrent findings of the courts below by the High Court under Section 100 CPC must be avoided

unless warranted by compelling reasons. In any case, the High Court is not expected to re-appreciating the evidence just to replace the findings for the lower courts.

20. *In our considered view the lower Appellate Court has fairly appreciated the evidence in the above background and has reached the conclusion that the suit was not barred by Limitation. Even assuming that another view is possible on a re-appreciation of the same evidence, that should not have been done by the High Court as it cannot be said that the view taken by the First Appellate Court was based on no material.”*

67. Similarly, the Hon'ble Apex Court in ***Kshitish Chandra Purkait vs. Santosh Kumar Purkait and others (1997) 5 SCC 438*** has held as under:

“10. We would only add that (a) it is the duty cast upon the High Court to formulate the substantial question of law involved in the case even at the initial stage; and (b) that in (exceptional) cases, at a later point of time, when the Court exercises its jurisdiction under the proviso to sub-section (5) of Section 100 C.P.C in formulating the substantial question of law, the opposite party should be put on notice thereon and should be given a fair or proper opportunity to meet the point. Proceeding to hear the appeal without formulating the substantial question of law involved in the appeal is illegal and is an abnegation or abdication of the duty cast on Court; and even after the formulation of the substantial question of law, if a fair or proper opportunity is not afforded to the opposite side, it will amount to denial of natural justice. The above parameters within which the High Court has to exercise its jurisdiction under Section 100 CPC should always be borne in mind. We are sorry to state that the above aspects are seldom borne in mind in many cases and

second appeals are entertained and/or disposed of, without conforming to the above discipline.

11. The guidelines to determine as to what is a "substantial question of law" within the meaning of Section 100 CPC, have been laid down by this Court in a Constitution Bench decision in Chunilal V. Mehta and Sons Ltd. v. Century Spg. and Mfg. Co. Ltd There is also a later decision of this Court in Mahindra and Mahindra Ltd. v. Union of India³. It is unnecessary to deal at length with that aspect any further."

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

"5. It is not within the domain of the High court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate Court. It is true that the lower appellate Court should not ordinarily reject witnesses accepted by the trial court, in respect of credibility but even where it has rejected the witnesses accepted by the trial Court, the same is no ground for interference in second appeal when it is found that the appellate Court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate Court unless it is found that the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the apex Court, or was based upon inadmissible evidence or arrived at without evidence."

69. In ***Naresh and others vs. Hemant and others, (2022) 18***

SCC 802, the Hon'ble Supreme Court held as under:

“10. The High Court invoked the presumption without proper consideration and appreciation of the facts considered and dealt with by two courts holding by reasoned conclusions why the presumption stood rebutted on the facts. The High Court also committed an error of record by holding that there was no evidence that Trimbakrao Ingole alone had constructed the house, a finding patently contrary to the admission of PW-1 in his evidence. The fact that mutation also was done in the name of Trimbakrao Ingole alone which remain unchallenged at any time was also not noticed. The conclusion of the High Court that improper appreciation of evidence amounted to perversity is completely unsustainable. No finding has been arrived at that any evidence had been admitted contrary to the law or that a finding was based on no evidence only in which circumstance the High Court could have interfered in the second appeal.

2. The High Court therefore manifestly erred by interfering with the concurrent findings on facts by two courts below in exercise of powers under Section 100, Civil Procedure Code, a jurisdiction confined to substantial questions of law only. Merely because the High Court may have been of the opinion that the inferences and conclusions on the evidence were erroneous, and that another conclusion to its satisfaction could be drawn, cannot be justification for the High Court to have interfered.

12. In Madamanchi Ramappa v. Muthaluru Bojappa, (1964) 2 SCR 673, this court with regard to the scope for interference in a second appeal with facts under Section 100 of the Civil Procedure Code observed as follows:

“12. The admissibility of evidence is no doubt a point of law, but once it is shown that the evidence on which courts of fact have acted was admissible and relevant, it is not open to a party feeling aggrieved by the findings recorded by the courts of fact to contend before the High Court in second appeal that the said evidence is not sufficient to justify the findings of fact in question. It has been always recognised that the sufficiency or adequacy of evidence to support a finding of fact is a matter for decision of the court of facts and cannot be agitated in a second appeal. Sometimes, this position is expressed by saying that like all questions of fact, sufficiency or adequacy of evidence in support of a case is also left to the jury for its verdict. This position has always been accepted without dissent and it can be stated without any doubt that it enunciates what can be properly characterised as an elementary proposition. Therefore, whenever this Court is satisfied that in dealing with a second appeal, the High Court has, either unwittingly and in a casual manner, or deliberately as in this case, contravened the limits prescribed by s. 100, it becomes the duty of this Court to intervene and give effect to the said provisions. It may be that in some cases, the High Court dealing with the second appeal is inclined to take the view that what it regards to be justice or equity of the case has not been served by the findings of fact recorded by courts of fact; but on such occasions it is necessary to remember that what is administered in courts is justice according to law and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law. If in reaching its decisions in second appeals, the High Court contravenes the express provisions of section 100, it would inevitably introduce in such decisions an element of disconcerting unpredictability which is usually associated with gambling; and that is a reproach which

judicial process must constantly and scrupulously endeavour to avoid.”

13. Though precedents abound on this settled principle of law, we do not consider it necessary to burden our discussion unnecessarily except to rely further on Gurdev Kaur v. Kaki, (2007) 1 SCC 546, holding as follows:

“71. The fact that, in a series of cases, this Court was compelled to interfere was because the true legislative intendment and scope of Section 100 CPC have neither been appreciated nor applied. A class of judges while administering law honestly believe that, if they are satisfied that, in any second appeal brought before them evidence has been grossly misappreciated either by the lower appellate court or by both the courts below, it is their duty to interfere, because they seem to feel that a decree following upon a gross misappreciation of evidence involves injustice and it is the duty of the High Court to redress such injustice. We would like to reiterate that the justice has to be administered in accordance with law.

xxxx

73. The Judicial Committee of the Privy Council as early as in 1890 stated that there is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however gross or inexcusable the error may seem to be, and they added a note of warning that no court in India has power to add to, or enlarge, the grounds specified in Section 100.

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81. Despite repeated declarations of law by the judgments of this Court and the Privy Council for over a century, still the scope of Section 100 has not been correctly appreciated and applied by the High Courts in a large number of cases. In the facts and circumstances of this case the High Court interfered with the pure findings of fact even after the amendment of Section 100 CPC in 1976. The High Court

would not have been justified in interfering with the concurrent findings of fact in this case even prior to the amendment of Section 100 CPC. The judgment of the High Court is clearly against the provisions of Section 100 and in no uncertain terms clearly violates the legislative intention.

82. In view of the clear legislative mandate crystallised by a series of judgments of the Privy Council and this Court ranging from 1890 to 2006, the High Court in law could not have interfered with pure findings of facts arrived at by the courts below. Consequently, the impugned judgment is set aside and this appeal is allowed with costs.”

14. The order of the High Court interfering with concurrent findings of facts by two courts is, therefore, held to be unsustainable in exercise of the powers under Section 100 of the Civil Procedure Code. The order of the High Court is consequently set aside. The orders dated 06.03.1998 and 13.06.2002 of the Trial Court and the First Appellate Court are restored. The suit of the plaintiffs is dismissed. The present appeal is allowed.”

70. In ***Brij Narayan Shukla (dead) through legal representatives vs. Sudesh Kumar Alias Suresh Kumar (dead) through Legal Representatives and others, (2024) 2 SCC 590***, the Hon’ble Supreme Court held as under:

“10.2 The High Court was hearing the Second Appeal under section 100 of Code of Civil Procedure, 1908 and it having reappreciated the findings to disturb findings of fact, committed an error.”

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

“7. By the impugned judgment and order and without answering anything on the substantial questions of law framed/formulated, absolutely in a casual manner, the High Court has allowed the Second Appeal and has set aside the concurrent findings recorded by both the courts below and thereafter has remanded the matter to the learned trial Court permitting the original plaintiff to amend the plaint and pray for fixation of the boundary.

9. Having heard learned counsel for the respective parties and having gone through the impugned judgment and order passed by the High Court, we are constrained to observe that the manner in which the High Court has dealt with the Second Appeal under Section 100 of the CPC is not appreciable at all. From the impugned judgment and order passed by the High Court, it appears that the High Court has exercised the powers as if the High Court was deciding the Writ Petition under Article 226 of the Constitution of India. The High Court has not appreciated at all that the High Court was deciding the Second Appeal under Section 100 of the CPC and that too against the concurrent findings of fact by both the courts below, which were, as such, on appreciation of evidence on record. Under the circumstances, the impugned judgment and order passed by the High Court is unsustainable.

11. At the cost of repetition, it is observed that the High Court was dealing with the Second Appeal under Section 100 CPC and the concurrent findings recorded by both the courts below which were on appreciation of evidence on record. Neither at the stage of deciding the suit nor even before the first Appellate Court even such a prayer was made to amend the plaint, which is now permitted by the

High Court, despite the fact that earlier in the suit during the course of trial, the plaint was amended. Under the circumstances also, the impugned judgment and order passed by the High Court is unsustainable.”

72. No other point urged by the learned counsel for the parties.

73. The substantial questions of law are answered accordingly.

74. In view of the concurrent, specific findings returned by the learned courts below, which were arrived at after appreciating the entire oral as well as documentary evidence placed on record, the suit filed by the plaintiff was rightly decreed and subsequently the said findings were affirmed by the learned first appellate Court. This Court finds no illegality, perversity, or jurisdictional error in the same.

75. Consequently, in view of the observations made hereinabove, the present appeal deserves to be dismissed and is accordingly dismissed along with any pending application(s).

(Romesh Verma)
Judge

12th August, 2026
(vt)