

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 110/2026

Decided on: 20.07.2026

Swarn Singh

.....Appellant

Versus

Harmeet Singh & anr.

.....Respondents

Coram

The Hon'ble Mr. Justice Romesh Verma, Judge.

Whether approved for reporting ?¹

For the appellant: Mr. H. S. Rangra, Advocate.

For the respondents: Mr. Sahil Malhotra, Advocate, for
respondent No.1.

Respondent No.2 ex parte.

Romesh Verma, Judge (Oral)

The present appeal arises out of the judgment and decree, dated 7.10.2025, as passed by the learned District Judge, Mandi, whereby the appeal preferred by the present appellant/defendant No.1, Swarn Singh, has been dismissed and the judgment and decree, dated 18.3.2025, as passed by the learned Civil Judge, Court No.2, Mandi, decreeing the

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

suit of the plaintiff/respondent for vacant possession, has been affirmed.

2 Brief facts of the case are that the plaintiff/respondent No.1, Harmeet Singh, filed a suit for vacant possession before the learned trial Court on 14.3.2012. As per the averments, as made in the plaint, the land comprised in Khewat/Khatauni No. 342/391, Khasra No. 2591/2382, measuring 215.57 sq. mts. situated in Mauza Mangwain, Hadbast No. 366/8, Tehsil Sadar, District Mandi, H.P. is recorded in the joint ownership and possession of the plaintiff along with other co sharers. The defendants are strangers and have no right, title and interest over the suit land. The plaintiff is having 1/3rd share in the land referred above and has constructed his house thereon.

3 It is the case of the plaintiff that that the defendants are the owners of the adjoining land, however, they, without consent and permission of the plaintiff, in his absence raised the construction over a part of a suit land by encroaching the land measuring 4.95 sq.mt. which has been described as Khasra No. 2591/2382/2/1 in the spot map prepared after obtaining demarcation report dated 7.4.2001. The defendants raised the construction of their house on

their own land in the year 2000 but thereafter extended the slab projection of their house over the suit land in the year 2001, thereby made encroachment over the suit land measuring 4.95 sq.mt. which is evident from the demarcation report and spot map. The defendants not only made the aerial encroachment by extending the slab projection over the suit land but they again raised the construction over the extended portion in the month of May 2005.

4 It was averred that the plaintiff had earlier filed Civil Suit no. 34/2005 for permanent prohibitory injunction against the defendants, which was pending before the learned Civil Judge (Junior Division), Court No. 3 Mandi, seeking injunction against the defendants from making aerial encroachment over the suit land, but despite the temporary injunction the defendants continued the construction work of the projection of the slab. Thereafter, the plaintiff filed an application for the amendment of the plaint seeking a decree for vacant possession but the same came to be dismissed. The plaintiff assailed the said order before this Court by filing revision petition and vide order dated 24.11.2009 passed in CMP no. 488/2009, the plaintiff was permitted to withdraw the suit with liberty to file afresh on the same cause of action.

Thereafter, the plaintiff instituted the instant suit seeking decree for vacant possession of the suit land by removing the aerial encroachment made by the defendants.

5 The suit was resisted by the defendants by filing written statement, wherein preliminary objections qua limitation, maintainability, estoppel etc. were raised. On merits, all the averments, as made in the plaint, were refuted. It was stated by the defendants that the defendants had constructed their house about 40 years ago and the area stated in the plaint measuring 4.95 sq. mts. is in ownership and possession of the defendants and the plaintiff, who is living adjacent by the side of the defendants' buildings, had the knowledge with regard to the prescriptive title of the defendants.

6 As per the defendants, after 40 years, no fresh construction has been raised by the defendants and the plaintiff has acquiesced the matter. It was averred that suit land, even if it is owned by the plaintiff, is now under the ownership and possession of the defendants on account of adverse possession as they are in open, peaceful and hostile possession of the suit land to the knowledge of the plaintiff

for the last more than 40 years and their possession has now matured into full ownership.

7 The plaintiff filed replication to the written statement, wherein the contents of the plaint were reiterated.

8 On the pleadings of the parties, the learned trial court on 16.7.2012 framed the following issues:-

1. Whether the Plaintiff is entitled to decree for vacant possession with regard to the suit land, as prayed for? OPP
2. Whether the suit is not within limitation, as alleged? OPD.
3. Whether the suit of the plaintiff is not maintainable in the present form, as alleged? OPD.
4. Whether the plaintiff is estopped by his own act and conduct from filing the present suit, as alleged? OPD.
5. Whether the defendants have acquired titled regarding the suit land by way of adverse possession, as alleged? OPD.
6. Whether the suit of the plaintiff is not tenable, as alleged? OPD.
7. Relief.

9 The learned trial court directed the respective parties to adduce evidence in support of their contentions to

corroborate their respective case. The learned trial court vide its judgment and decree dated 18.3.2025 allowed the suit of the plaintiff by passing decree for vacant possession of the suit land directing the defendants to hand over the vacant possession within a period of 60 days, excluding the time taken to prepare certified copy of the order.

10 Feeling dissatisfied by the judgment and decree, dated 18.3.2025, defendant No.1/appellant preferred an appeal before the learned first appellate Court on 26.4.2025, which came to be dismissed vide judgment and decree dated 7.10.2025.

11 Still feeling aggrieved by the aforesaid judgments and decrees, the defendant No.1/appellant has preferred the present regular second appeal.

12 With the consent of the parties, the instant appeal is finally heard at admission stage on the following substantial question of law:-

Whether both the Courts below have misread, misconstrued and misinterpreted the oral as well as documentary evidence as also the pleadings of the parties and drawing wrong inference on facts, which are proved on record as well as statement of PWs and DWs, which has materially

prejudiced the case of the appellants/defendants?

13 It is contended by Mr. H. S. Rangra, learned counsel for the defendant No.1/appellant that the impugned judgments and decrees, as passed by the learned courts below, are not sustainable in the eyes of law and thus, liable to be quashed and set aside. He has submitted that the appellant is in possession of the suit land for the last more than 40 years and has perfected his title by means of adverse possession. He has further submitted that the learned Courts below have ignored and mis-appreciated oral as well as documentary evidence placed on record, therefore, after accepting the instant appeal, suit as filed by the plaintiff, deserves to be dismissed.

14 On the other hand, Mr. Sahil Malhotra, learned counsel for the plaintiff/respondent No.1 has defended the impugned judgments and decrees as passed by the learned courts below. He has submitted that this Court while invoking provisions of Section 100 of CPC will not interfere with the concurrent findings of fact, as rendered by the learned Courts below and, thus, prayed for dismissal of the instant appeal.

15 I have heard the learned counsel for the parties and have also gone through the material available on the case file.

16 The plaintiff/respondent No.1 filed a suit for vacant possession on the ground that the land comprised in Khewat/Khatauni No. 342/391, Khasra No. 2591/2382, measuring 215.57 sq. mts. situated in Mauza Mangwain, Hadbast No. 366/8, Tehsil Sadar, District Mandi, H.P. is recorded in the joint ownership and possession of the plaintiff along with other co sharers. The defendants without consent and permission of the plaintiff, in his absence, raised the construction over a part of a suit land by encroaching the land measuring 4.95 sq.mt. which has been described as Khasra no. 2591/2382/2/1 in the spot map prepared after demarcation report dated 7.4.2001. It is the case of the plaintiff that the defendants raised construction of their house in the year 2000 but thereafter extended the slab projection of their house over the suit land in the year 2001 and thus, made encroachment over the suit land measuring 4.95 sq.mt. Though, the defendants were requested to remove the illegal construction, but they did not pay any heed to such request.

17 The suit has been contested by the defendants only on the ground that the defendants are in possession of the suit land for the last 40 years. It is their case that after 40 years, no fresh construction has been raised by them and now on account of adverse possession, they are in open, peaceful and hostile possession of the suit land to the knowledge of the plaintiff and their possession has now matured into full ownership.

18 In order to substantiate his case, the plaintiff entered into the witness box as PW5 and tendered in evidence his affidavit, Ext. PW5/A, wherein he reiterated all the averments as made in the plaint. He stated that he is having 1/3rd share in suit land and he has constructed his house to the extent of his share. The defendants without consent and permission of the plaintiff in his absence raised construction over the part of the suit land by encroaching upon the land measuring 4.95 sq. mts. He further stated that the defendants raised construction of their house in the year 2000, however thereafter extended slab projection of their house over the suit land in the year 2001. In his cross-examination, the defendants could not extract anything favourable to them.

19 In order to rebut the evidence of the plaintiff, defendant No.1 Swarn Singh, stepped into the witness box as DW1 and tendered in evidence his affidavit, Ext. DW1/A, wherein he reiterated all the averments, as made in the written statement. He stated that he along with his brother constructed the house about 50 years back on the land which is exclusively owned and possessed by them. He stated that if it is proved that the area measuring 4.95 sq. mts. is in possession and ownership of the plaintiff, then they have perfected their title by means of adverse possession which is open and hostile to the knowledge of the plaintiff for the last 50 years.

20 The plaintiff though placed on record copy of demarcation report, Ext. PW3/C, however both the courts below have concurrently disbelieved the same. Those findings have not been challenged by the plaintiff and have attained finality.

21 In order to substantiate title of the plaintiff, he has placed on record copy of jamabandi, Ext. PW5/B for the year 1999-2000, which pertains to the suit land comprised in Khasra No.2591/2382 and as per the same, it is being owned and possessed by different co-sharers including the plaintiff.

The said document clearly establishes that the plaintiff is one of the co-sharers over the suit land and the said evidence has not been rebutted or disproved by the defendants by leading any cogent oral as well as documentary evidence.

22 The learned courts below have rightly come to the conclusion that once the defendants have set up the plea of adverse possession, meaning thereby they have acknowledged the title of the plaintiff over the suit land. The ingredients of adverse possession have neither been pleaded nor proved by the defendants. The pleading qua adverse possession is cryptic, vague and confusing. Plea of adverse possession has been raised by the defendants halfheartedly. They have failed to prove the essential ingredients as have been laid down by the Hon'ble Supreme Court.

23 A person who claims adverse possession should show; (a) on what date he came into possession; (b) what was the nature of his possession; (c) whether the factum of possession was known to the other party; (d) how long his possession has continued; and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour since he is trying to defeat rights of

true owner, it is for him to clearly plead and establish all facts necessary to prove his adverse possession.

24 Adverse possession is a right which comes into play not just because someone loses his right to reclaim the property out of continuous and willful neglect, but also on account of possessor's positive intent to dispossess. Therefore, it is important to take into account before stripping somebody on his lawful title, whether there is an adverse possessor worthy and exhibiting more urgent and genuine desire to dispossess and step into the shoes of the owner of the property on paper. The intention is a mental element which is proved and disproved through positive acts. Existence of some events can go a long way to weaken the presumption of intention to dispossess, which might have painstakingly grown out of long possession which otherwise would have sufficed in a standard adverse possession case. The fact of possession is important in more than one ways; firstly, due compliance on this court attracts the Limitation Act and it also assists the court to unearth the intention to dispossess.

25 The intention to dispossess needs to be open and hostile enough to bring the same to the knowledge and the

plaintiff has an opportunity to object. After all adverse possession right is not a substantive right but a result of the waiving or omission of the right to defend or care for the integrity of property on the part of the owner of the property on paper. Adverse possession statutes, like other statutes of limitation, rest on a public policy that does not promote litigation and aims at the repose of conditions that the parties have suffered to remain unquestioned long enough to indicate their acquiescence. Intention implies knowledge on the part of adverse possessor.

26 The issue is that intention of the adverse user gets communicated to the owner of the property on paper. This is where the law gives importance to hostility and openness as pertinent qualities of manner of possession. It follows that the possession of adverse possessor must be hostile enough to give rise to a reasonable notice and opportunity to the owner of the property on paper. Intention to possess cannot be substituted for intention to dispossess which is essential to prove adverse possession. Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of

adverse possession is not a pure question of law but a blended one of fact and law.

27 The Hon'ble Supreme Court has laid down the exposition of law qua adverse possession in the following manner:

(i) In **T. Anjanappa and others vs. Somalingappa and another, (2006) 7 SCC 570**, the Hon'ble Supreme Court held as under:

“12. The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property.

13. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them.

“24. It is a matter of fundamental principle of law that where possession can be referred to a lawful title, it will not be considered to be adverse. It is on the basis of this principle that it has been laid down that since the possession of one co-owner can be referred to his status as co-owner, it cannot be considered adverse to other co-owner.

14. Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of the rightful owner and tends to extinguish that person's title. Possession is not held to be adverse if it can be referred to a lawful title. The person setting up adverse possession may have been holding under the rightful Owner's title e.g. trustees, guardians, bailiffs or agents. Such persons cannot set up adverse possession.

"Adverse possession" means a hostile possession which is expressly or impliedly in denial of title of the true owner. Under Article 65 of the Limitation Act, burden is on the defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e.

possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed.

Where possession could be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all.

(ii) In **Chatti Konatri Rao and others vs. Palle Venkata Subba Rao, (2010) 14 SCC 316**, the Hon'ble Apex Court further held as under:

"13. What facts are required to prove adverse possession have succinctly been enunciated by this Court in the case of [Karnataka Board of Wakf vs. Government of India and Ors.](#) (2004) 10 SCC 779. It has also been observed that a person pleading adverse possession has no equities in his favour and since such a person is trying to defeat the rights of the true owner, it is for him to clearly plead and establish necessary facts to establish his adverse possession. Paragraph 11 of the judgment which is relevant for the purpose reads as follows:

"11. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in

extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See [S.M. Karim v. Bibi Sakina AIR 1964 SC 1254](#), [Parsinni v. Sukhi \(1993\) 4 SCC 375](#) and [D.N. Venkatarayappa v. State of Karnataka \(1997\) 7 SCC 567](#)) Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. [[Mahesh Chand Sharma \(Dr.\) v. Raj Kumari Sharma](#)]

14. In view of the several authorities of this Court, few whereof have been [referred above](#), what can safely be said that mere possession however long does not necessarily mean that it is adverse to the true owner. It means hostile possession which is expressly or impliedly in denial of the title of the true owner and in order to constitute adverse possession the possession must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The possession must be open and hostile enough so that it is known by the parties interested in the property. The plaintiff is bound to prove his title as also possession within 12 years and once the plaintiff proves his title, the burden shifts on the defendant to establish that he has perfected his title by adverse possession. Claim by adverse possession has two basic elements i.e. the possession of the defendant should be adverse to the plaintiff and the defendant must continue to remain in possession for a period of 12 years thereafter.

15. Animus possidendi as is well known a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until possessor holds property adverse to the title of the true owner for the said purpose. The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner,

duration of possession and possession was open and undisturbed. A person pleading adverse possession has no equities in his favour as he is trying to defeat the rights of the true owner and, hence, it is for him to clearly plead and establish all facts necessary to establish adverse possession. The courts always take unkind view towards statutes of limitation overriding property rights. Plea of adverse possession is not a pure question of law but a blended one of fact and law.”

28 Since, the defendant has failed to plead and prove the essential ingredients of adverse possession in consonance with the exposition of law as laid down by the Hon’ble Apex Court, as referred hereinabove, the learned Courts below have rightly decreed the suit filed by the plaintiff based on the title.

29 The title of the plaintiff over the suit land has been admitted by the defendants by raising plea of adverse possession, therefore, in the natural corollary, the learned Courts below have rightly decreed the suit of the plaintiff for vacant possession on the strength of title. The learned Courts below have concurrently held the plaintiff/respondent to be the owner of the suit land. Since the defendants have raised construction over the suit land, therefore, on the basis of the

title, the plaintiff is entitled for the decree of vacant possession by removal of the said encroachment from the suit land.

30 The learned counsel for the respondent No.1 has contended that this Court, while exercising powers under Section 100 of the CPC, will not interfere in the concurrent findings of fact, as rendered by the learned Courts below. To buttress his submission, he has relied upon judgment of the Hon'ble Supreme Court in **Santosh Hazari vs. Purushottam Tiwari (deceased) by LRs, (2001) 3 SCC 179**, wherein it was held as under:

11. Even under the old Section 100 of the Code (pre-1976 amendment), a pure finding of fact was not open to challenge before the High Court in second appeal. However the Law Commission noticed a plethora of conflicting judgments. It noted that in dealing with second appeals, the Courts were devising and successfully adopting several concepts such as, a mixed question of fact and law, a legal inference to be drawn from facts proved, and even the point that the case has not been properly approached by the Courts below. This was creating confusion in the minds of the public as to the legitimate scope of second appeal under S.100 and had burdened the High Courts with an unnecessarily large number of second appeals. Section 100 was, therefore, suggested to be amended so as to provide that the right of second

appeal should be confined to cases where a question of law is involved and such question of law is a substantial one. (See Statement of Objects and Reasons). The Select Committee to which the Amendment Bill was referred felt that the scope of second appeals should be restricted so that litigations may not drag on for a long period. Reasons, of course, are not required to be stated for formulating any question of law under sub-section(4) of Section 100 of the Code; though such reasons are to be recorded under proviso to sub-section (5) while exercising power to hear on any other substantial question of law, other than the one formulated under sub- section(4).

31 The Hon'ble Supreme Court in catena of judgments has held that the first appellate is the final court of the fact. No doubt, second appellate court exercising the power under Section 100 of CPC can interfere with the findings of fact on limited grounds such as - (a) where the finding is based on inadmissible evidence; (b) where it is in ignorance of the relevant admissible evidence; (c) where it is based on misreading of evidence; (d) where it is perverse, but that is not case in hand.

32 The Hon'ble Supreme Court while dealing with scope of interference under Section 100 of CPC in ***Hero***

Vinoth (minor) vs. Seshammal, (2006) 5 SCC 545 has 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 xx xx xx

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 "involving 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.”

33 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.A-2) 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 fulfil his obligation and accept performance when the time for performance arrives."

34 No other point was urged by the learned counsel for the parties.

35 Both the Courts below have rightly appreciated the point in controversy after considering the oral as well as documentary evidence placed on record and this Court does not find any illegality or perversity in the impugned judgments and decrees, as concurrently passed by the learned Courts below, and the same are upheld. The substantial question of law is answered accordingly.

36 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.

20th July, 2026
(pankaj)

(Romesh Verma)
Judge