

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 51/2025

Reserved on: 07.08.2026

Decided on: 25.08.2026

Kuldeep Singh

.....Appellant

Versus

Manjeet Singh & ors.

.....Respondents

Coram

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

Whether approved for reporting ?¹

For the appellant: Mr. Sanjeev Kuthiala, Sr. Advocate
with Ms. Tamanna Sharma, Advocate.

For the respondents: Mr. Tejasvi Dogra, Advocate.

Romesh Verma, Judge

The present appeal arises out of the judgment and decree, dated 30.12.2024, as passed by the learned Additional District Judge, Ghumarwin, District Bilaspur, H.P. (Camp at Bilaspur), whereby the appeal preferred by the plaintiff/appellant has been dismissed and the judgment and decree, dated 11.09.2017, dismissing the suit of the plaintiff/appellant, as passed by the learned Civil Judge

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

Court No.2, Ghumarwin, District Bilaspur, have been affirmed.

2 Brief facts of the case are that the plaintiff/appellant filed a suit under Section 34 of the Specific Relief Act for declaration to the effect that he is owner in possession of the land comprised in Khasra Nos. 1775, 1794, 1795, Khata/Khatoni No. 24/30, measuring 2-9 Bighas, situated in Village Sayoutha, Pargna Sunhani, Tehsil Ghumarwin, District Bilaspur, H.P. and the revenue entries in the names of the defendants/respondents as mortgagees are illegal, wrong, null and void and, thus, not binding upon rights of the plaintiff. Further prayer was made for grant of permanent prohibitory injunction restraining the defendants from interfering in the peaceful ownership and possession of the plaintiff over the suit land in any manner, through their agents, servants, family members and representatives.

3 As per the case set up by the plaintiff/appellant, predecessor-in-interest of the plaintiff, namely, Ram Ditta, was tenant in possession of the suit land and had acquired ownership by virtue of H.P. Tenancy and Land Reforms Act and Rules 1975. After death of Ram Ditta, whole of his estate has been inherited by the plaintiff and the same is duly

recorded in the revenue record. The defendants have got no right, title and interest in the suit land, but on the basis of aforesaid wrong and illegal entries, they are trying to dispossess the plaintiff and to take forcible possession of the suit land. It was averred that in case the defendants claim themselves to be mortgagees, then the plaintiff is entitled to relief of possession of the suit land by way of redemption since all the mortgages have been abolished by operation of H.P. Debt Reduction Act and the owner is entitled to the relief of possession as mortgagor or on the strength of his title. Hence, the suit, as aforesaid.

4 The suit was resisted by the defendants by filing written statement, wherein preliminary objections qua maintainability, locus standi, estoppel, jurisdiction, limitation, cause of action and valuation were raised. On merits, all the averments, as made in the plaint were specifically refuted and denied. As per case set up by the defendants, they are co-owners in joint possession over the suit land. Earlier, Sukh Ram and Karam Singh were the mortgagees of the suit land, but had acquired right of ownership by way of foreclosures. Ram Ditta was never inducted as tenant over the suit land either by the land

owners or predecessor-in-interest of the defendants. In the alternative, even if it is proved that Ram Ditta was tenant even then prior to his tenancy, right by way of foreclosures, was acquired by the predecessor-in-interest of the defendants. The plaintiff has got no relation with Ram Ditta. The plaintiff is Rajput by caste, whereas Ram Ditta was Lohar. It was averred that mutation No. 271 sanctioned by the A.C. 2nd Grade on 10.09.1997 was set aside in the appeal by Collector, Sub Division Ghumarwin on 20.04.2001 vide case No. 89/2. Even the appeal filed against the order dated 20.04.2001 came to be dismissed by the Additional Deputy Commissioner, Bilaspur, while exercising power of Commissioner, vide order dated 30.03.2002. Feeling aggrieved, the plaintiff thereafter filed revision petition No. 88/2003, which was dismissed by the revisional Court upholding the orders, dated 20.04.2001 and 30.03.2002. The plaintiff had nothing to do with the property of Ram Ditta. Similarly, even Ram Ditta had no right, title and interest over the suit land and it is the defendants, who have acquired the title over the suit land during life time being mortgagees.

5 In the amended written statement, it was averred that Ram Ditta never executed the alleged will, dated 20.4.1977 in favour of the plaintiff nor same has been thumb marked by Ram Ditta as the same has been manufactured by the plaintiff in connivance with the witnesses of the alleged will. The alleged will is highly suspicious and surrounded by suspicious circumstances and it does not carry any sanctity in the eyes of law. The plaintiff never remained in possession of the suit land, therefore, the defendants prayed for dismissal of the suit as filed by the plaintiff.

6 The plaintiff filed replication to the written statement, wherein the contents of the plaint were reiterated. Stand was adopted by the plaintiff that Ram Ditta was holding the suit land as non occupancy tenant under the Prabh Dayal etc. as mentioned in missal haquiat and jamabandi and thereafter, Ram Ditta acquired proprietary rights over the suit land by enforcement of H.P. Tenancy and Land Reforms Act. Ram Ditta during his life time in his sound disposing state of mind and out of his free will had voluntarily executed his last will on 20.04.1977 qua his entire estate i.e. suit land in favour of the plaintiff, which is

a legal, valid and binding document. Prior to institution of the instant suit, Civil Suit No.448/1 of 05/1999, as filed by the plaintiff, was decreed by the learned Civil Judge, Jr. Division, Court No.2, Ghumarwin, whereas counter claim No. 660/1 of 05/04, was dismissed vide judgment and decree, dated 31.03.2009. In the replication, entire thrust of the plaintiff is that the will, dated 20.04.1977 has been validly and legally executed in favour of the plaintiff. Lastly, it was averred that since the defendants are not mortgagees so the question of foreclosure does not arise.

7 On the pleadings of the parties, the learned trial court on 07.09.2010 and 21.03.2017 framed the following issues:-

1. *Whether the plaintiff is entitled for decree of declaration to the effect that plaintiff is owner in possession over the suit land, as prayed for? OPP*
2. *Whether the plaintiff is entitled for decree of declaration to the effect that revenue entries in name of defendants as mortgagee are illegal, wrong, null and void, as prayed for? OPP*
3. *Whether the plaintiff is entitled for decree of permanent prohibitory injunction, as prayed for? OPP*
- 3-A. *Whether Sh. Ram Ditta had executed a Will dated 20-04-1977 in favour of plaintiff, as alleged? OPP.*
4. *Whether the suit of the plaintiff is not maintainable in the present form, as alleged? OPD*

5. *Whether the plaintiff has no locus standi to file the present suit, as alleged? OPD*
6. *Whether the plaintiff is estopped to file the present suit by his own act, conducts, commissions and omissions, as alleged? OPD*
7. *Whether this court has no jurisdiction to decide the present suit, as alleged? OPD*
8. *Whether the suit of plaintiff is barred by limitation, as alleged? OPD*
9. *Whether the suit of the plaintiff is bad for non-joinder and mis-joinder of necessary parties, as alleged? OPD*
10. *Whether the suit of plaintiff is bad for want of better particulars, as alleged? OPD*
11. *Whether the suit of the plaintiff is not properly valued for the purpose of court fee and jurisdiction, as alleged? OPD*
12. *Whether the suit of plaintiff is not properly verified, as alleged? OPD*
13. *Relief.*

8 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 11.09.2017 dismissed the suit of the plaintiff.

9 Feeling dissatisfied by the judgment and decree, dated 11.09.2017, plaintiff/appellant preferred an appeal before the learned first appellate Court on 27.11.2017,

which came to be dismissed vide judgment and decree dated 30.12.2024.

10 Still feeling aggrieved by the aforesaid judgments and decrees, the plaintiff/appellant has preferred the present regular second appeal.

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

Whether the learned Courts below have misread and mis-appreciated the pleadings of the parties as also the evidence on record, both oral and documentary, and on account of such misreading and mis-appreciation of the pleadings as also evidence on record, the findings of both the Courts below are vitiated and deserve to be set aside?

12 It is contended by Mr. Sanjeev Kuthiala, learned Senior Advocate, assisted by Ms. Tamanna Sharma, Advocate, for the plaintiff/appellant that the impugned judgments and decrees, as passed by the learned courts below, are erroneous and thus, liable to be quashed and set aside. He has submitted that the learned Courts below have not appreciated the real point of controversy and have mis-interpreted and mis-construed the oral as well as

documentary evidence, as a result of which, great prejudice has been caused to the plaintiff. He has further submitted that the plaintiff has been able to make out a case for decreeing the suit, therefore, after accepting the instant appeal, the suit as filed by the plaintiff, deserves to be decreed.

13 On the other hand, Mr. Tejasvi Dogra, learned counsel for defendants/respondents has defended the impugned judgments and decrees as passed by the learned courts below. He has submitted that the learned Courts below after taking into consideration the oral as well as documentary evidence have rightly non-suited the plaintiff/appellant. 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.

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

15 The case as set up by the plaintiff is that he is entitled for declaration and injunction on the ground that

his predecessor-in-interest, namely, Ram Ditta, was tenant in possession of the suit land and by virtue of H.P. Tenancy and Land Reforms Act and Rules 1975, he had acquired ownership over the suit land. After death of Ram Ditta, whole of his estate devolved upon the plaintiff, therefore, he is owner in possession of the suit land. It is the case of the plaintiff that the defendants have got no right, title and interest in the suit land, but on the basis of wrong and illegal entries, they are trying to dispossess the plaintiff and to take forcible possession of the suit land.

16 On the other hand, defendants have taken the defence that they are co-owners in joint possession over the suit land. Earlier, Sukh Ram and Karam Singh were the mortgagees of the suit land, but they had acquired right of ownership by way of foreclosures. As per the defendants, Ram Ditta was never inducted as tenant either by the land owners or predecessor-in-interest of the defendants and thus, even if it is proved that Ram Ditta was tenant even then prior to his tenancy, by way of foreclosures right was acquired by the predecessor-in-interest of the defendants. The plaintiff has got no relation with Ram Ditta. Ram Ditta never executed alleged will, dated 20.4.1977 in favour of the

plaintiff nor the same has been thumb marked by Ram Ditta and if any document has been produced by the plaintiff, the same has been manufactured by him in connivance with the witnesses of the alleged will. The will is highly suspicious and surrounded by suspicious circumstances.

17 The plaintiff in order to prove his case appeared in the witness box as PW1 and tendered in evidence his affidavit, Ext. PW1/A, wherein he stated that the suit land was owned by his predecessor-in-interest, Ram Ditta, who was inducted as tenant over the suit land and by virtue of H.P. Tenancy and Land Reforms Act, he became exclusive owner of the suit land and after the death of Ram Ditta, the suit land devolved upon the plaintiff. He stated that in case the defendants proclaim themselves to be mortgagees, in that event, suit of the plaintiff be decreed for possession by way of redemption and further by enforcement of the H.P. Debt Reduction Act, all kinds of mortgages have come to an end. He further stated that his predecessor in interest right from inception was in possession of the suit land and the defendants never remained in possession over the same.

Entry of mortgagees in favour of the defendants is incorrect and not binding upon the rights of the plaintiff.

18 In cross-examination, the plaintiff has admitted that the suit land consists of 2 bighas 9 biswas. He stated that he does not know how much rent was being paid by the tenant. He does not know exact date, month and year of death of Ram Ditta. He stated that he is Rajput by caste, whereas Ram Ditta was Lohar. He stated that he does not remember the date, month and year of execution of the will. He does not know that Ram Ditta had expired on 22.08.1977. He does not know that Sukh Ram and Karam Singh had become owners of the suit land. He also does not know that Ram Ditta had paid rent to which of the owners of the suit land. He does not know that mutation of the Will has been cancelled. He denied that Ram Ditta did not execute any will, Mark X, in his favour. He does not know whether Sukh Ram and Karam Singh had executed wills in favour of their successors. He does not know that the suit land was given to Sukh Ram and Karam Singh by executing mortgage and thereafter they became owners of the suit land. He admitted that the suit land was earlier in possession of Sukh Ram and Karam Singh and thereafter the defendants are in

possession of the same. He does not know that the defendants are in possession of the suit land for the last 60-70 years.

19 PW2 Kehar Singh deposed that he has retired as Executive Engineer from Electricity Board. His father, Prabhat Singh, had died in the year 2003. He recognized signature of his father over Mark X, which are encircled red. In his cross-examination, he stated that he does not know what has been written in Mark X. Self stated that he can recognize only signature of his father. He does not know Urdu. He denied that his father had not appended his signatures over mark X.

20 In order to rebut the case of the plaintiff, defendant No.1, Manjeet Singh appeared in the witness box as DW1 and stated that the suit land is owned and possessed by the defendant. He stated that possession of the suit land is with them since the time of their forefathers. He stated that since the owners did not redeem the suit land within statutory period, therefore, by virtue of foreclosure they have become owner of the suit land. The plaintiff is not related to Ram Ditta, son of Nihala in any manner. He stated that Ram Ditta never executed any document in favour of the plaintiff.

He deposed that on 20.4.1977, Ram Ditta, did not execute any will in favour of the plaintiff. Mutation No. 271 was challenged before the Collector and the said mutation was ordered to be rejected. Thereafter, the appeal and revision having been filed by the plaintiff also came to be dismissed.

21 In cross-examination, he admitted that the plaintiff had earlier instituted a suit against the defendants. He admitted that the suit came to be decreed in favour of the plaintiff. He further admitted that the counter claim in that earlier suit which was filed by the defendants was dismissed. He admitted that District Judge Bilaspur had dismissed their appeal. He denied that the will was referred in the earlier instituted suit. He denied that Ram Ditta during his life time executed any will in favour of the plaintiff. He denied that the suit land never remained in their possession as mortgagees. He denied that the possession of the suit land never remained with them.

22 DW2, Ranjeet Singh stated that he knew the parties to the lis. Earlier the suit land was owned by Sukh Ram and Karam Singh and after their death, the suit land has devolved on their successors. The suit land was given to

the defendants as mortgagees. The plaintiff has got no concern over the suit land. He stated that Ram Ditta never executed any will in favour of the plaintiff. He denied that the suit land is possessed by the plaintiff. He denied that the suit land never remained in possession of Sukh Ram and Karam Singh as mortgagees.

23 The plaintiff in order to corroborate his case, has placed on record copy of the alleged Will, Mark X which is in Urdu. Ext. P2 is the copy of the jamabandi of Mauja Sayoutha. Ext. P3 is copy of the missal haquiat of Mauja Sayoutha, Pargana Sunhani.

24 The plaintiff has approached the Court by taking a stand that Ram Ditta was initially inducted as non occupancy tenant over the suit land and by virtue of operation of law, he became the owner of the suit land. As per the plaintiff, being successor of Ram Ditta and on the basis of the execution of the will, now it is the plaintiff who is owner in possession of the suit land and the entries of mortgages in favour of the defendants are illegal, wrong, null and void and not binding on the rights of the plaintiff. The plaintiff was required to establish his claim by proving that any will was executed in his favour by Ram Ditta. As per his

own admission, the plaintiff is Rajput by caste and Ram Ditta was Lohar.

25 It has been contended by learned counsel the defendants/respondents that there was no relationship of plaintiff with Ram Ditta, therefore, it cannot be presumed that after death of Ram Ditta the suit land has been succeeded by the plaintiff.

26 Though, the plaintiff in order to substantiate his contention has placed on record copy of the Will, Mark X however, neither the same has been pleaded nor proved as per Section 63 of Indian Succession Act and section 68 of the Indian Evidence Act.

27 Section 63 of the Indian Succession Act reads as under:

“63. Execution of unprivileged Wills.—

Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his Will according to the following rules:—

(a)The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b)The signature or mark of the testator, or the signature of the person signing for him, shall be so

placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c)The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”

28 Section 68 of the Indian Evidence Act reads as follows:-

“68. Proof of execution of document required by law to be attested.

If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence :[Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.”

29 None of the ingredients, as stipulated in the aforesaid provisions, has been met out by the plaintiff, therefore, no relief can be granted to him on that account.

30 The plaintiff was required to establish that on the strength of the will he acquired the title of the suit land after the death of Ram Dittta, however the alleged will has not been proved, therefore, it cannot be inferred or held that the suit land came in the hands of the plaintiff from Ram Ditta by virtue of alleged will.

31 The plaintiff examined PW2 Kehar Singh in order to prove signatures of Ram Ditta over the alleged Will, however, except for admitting the signatures of his father, he has denied everything in his cross-examination. As the plaintiff has miserably failed to prove that any will was executed in his favour, therefore, the findings of fact as returned by the learned Courts below are legal, valid and sustainable.

32 It is contended by the learned senior counsel for the appellant that on the strength of the will, mutation No. 271 was attested in favour of the plaintiff, therefore, it demonstrates and establishes that it is the plaintiff who is owner of the suit land.

33 The defendants have placed on record copy of order, dated 20.4.2001, Ext. DJ, whereby appeal filed by the defendants under Section 14 of the H.P. Land Revenue Act against the attestation of mutation bearing No. 271 was accepted and the case was remanded back to A. C. 2nd Grade, to decide it by entering the mutation afresh. Thereafter, the plaintiff preferred an appeal before the Divisional Commissioner Mandi, who affirmed the findings of the Collector and thereafter the Financial Commissioner also rejected the revision petition filed by the plaintiff. Meaning thereby that on the strength of mutation also, the plaintiff cannot take any advantage in his favour.

34 In order to get decree of declaration, it was incumbent upon the plaintiff to have established the title and ownership, but in the present case, neither the Will has been pleaded nor proved in accordance with law and the mutation, on which heavy reliance has been placed by the learned senior counsel for the appellant, has already been quashed and set aside by the competent authority.

35 The learned senior counsel for the appellant would submit that the Civil Suit No. 448/1/2005/1999, as filed by the plaintiff qua the title, has been decreed in the

previous round of litigation vide judgment and decree dated 31.3.2009 as passed by the learned Civil Judge, (Junior Division), Court No.2, Ghumarwin, District Bilaspur, H.P., copy thereof has been placed on record as Ext. P-11, which establishes the case of the plaintiff and proves that the will, as executed by Ram Ditta in his favour, has been duly sanctioned and approved by the learned Civil Court.

36 The perusal of the aforesaid judgment and decree, dated 31.3.2009 shows that the said suit came to be filed with respect to land comprised in Khasra No.4932/1856, Khata Khatoni No. 23/30, measuring 8 biswas, situated in Seotha, Pargna Sunhani, Tehsil Ghumarwin, District Bilaspur. The appellant has failed to prove that the land involved in the earlier round of litigation and the present suit is the same. Moreover, the aforesaid judgment and decree nowhere suggests that any finding was passed by the learned civil court with regard to validity of the alleged Will. The learned trial court partly decreed the suit of the plaintiff by restraining the defendants from interfering in any manner by changing the nature, digging any part, cutting trees or making any construction over the suit land. Counter claim

filed by the defendants was held to be not maintainable and accordingly the same was dismissed.

37 Admittedly, the said findings were affirmed by the Court of learned District Judge Bilapsur, in Civil Appeal No. 15/2009 vide judgment and decree dated 29.3.2012, Ext. P-13. Thereafter, the defendants approached this Court by filing RSA No. 365/12, which came to be dismissed vide judgment dated 17.09.2012 holding therein that no question of law much less substantial question of the law arose for determination in the appeal inasmuch as from the pleadings, it was found that both the parties had set up independent wills to claim title through different persons and the wills had not been placed and proved on record in accordance with law.

38 As observed above, in the earlier civil suit, there is no iota of evidence to show that the alleged will in favour of the plaintiff has been held to be legal, valid and sustainable in the eyes of law. The plaintiff has failed to prove its case as rightly pointed out by the learned counsel for the respondents as in the absence of any title or ownership no relief can be granted to the plaintiff and the learned Courts

below have rightly rejected the claim as set up by the plaintiff.

39 Insofar as the findings which have been returned against the respondents are concerned, no appeal has been preferred by them in the present proceedings. As rightly held by the learned Courts below, on the strength of weakness of the defendants, no relief can be granted to the plaintiff as the plaintiff has to stand on his own legs in order to prove his case. Though there is finding by the learned Courts below that the defendants are not the owners but as the will has not been proved in any court of law and the plaintiff has failed to prove the said document, therefore, no decree of declaration can be passed in favour of the plaintiff with respect to the suit land. As far as claim of the plaintiff with respect to grant of injunction is concerned, in his cross-examination, he has himself admitted that suit land was earlier in possession of Sukh Ram and Karam Singh and thereafter the defendants are in possession of the same.

40 Once there is categorical admission on the part of the plaintiff, therefore, as per the well settled principle of law, the plaintiff, being out of possession, is not entitled for grant of decree of injunction.

41 This Court is of the considered opinion that the learned Courts below have rightly determined and adjudicated the point in controversy and since there are concurrent findings of fact, as rendered by the learned Courts below, therefore, this Court is in agreement with the same.

42 The Hon'ble Supreme Court in catena of judgments has held that the first appellate court 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.

43 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.”

44 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."

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

46 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.

47 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.

25th August, 2026

(pankaj)

**(Romesh Verma)
Judge**