

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 221/2024

Reserved on: 21.08.2026

Decided on: 25.09.2026

Ram Pyari (deceased) through her LR Appellant

Versus

Nirmala Respondent

Coram

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

Whether approved for reporting ?¹

For the appellant: Mr. Rajnish K. Lall, Advocate.

For the respondent: Mr. Vipin Pandit & Mr. Parikshit,
Advocates.

Romesh Verma, Judge

The present appeal arises out of the judgment and decree, dated 19.03.2022, as passed by the learned District Judge, Solan, H.P., whereby the appeal preferred by the defendant No.1/respondent has been allowed and the judgment and decree, dated 31.10.2017, decreeing the suit of the plaintiff/appellant, as passed by the learned Civil Judge (Junior Division), Court No.1, Solan, has been reversed.

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

2 The facts as emerge in the present case are that the present appellant/plaintiff filed a suit for the grant of permanent prohibitory injunction and decree for mandatory injunction by getting the construction demolished at the cost and expenses of the defendants, which as per the case of the plaintiff, was raised by the defendants during the pendency of the suit and to get it restored on the same position as it was existing earlier and for handing over the possession of the same to the plaintiff.

3 It is the case of the plaintiff that she is the co-owner in joint possession of in Khata Khatauni No. 30/72, Khasra Nos. 826/464, 466, 467, Kita 3 measuring 436 square meters, out of which the plaintiff is owner in possession to the extent of 145 square meters situated at Village Kather, Tehsil and District Solan. The plaintiff purchased the suit land from defendant No. 2, Jivan Lata vide registered sale deed No. 1009 on 1.11.2002 for total sale consideration of Rs.1,50,000/- and the sale deed was duly registered with the Sub Registrar Solan and the necessary mutation bearing No. 764 was attested in favour of the plaintiff.

4 As per plaintiff, the landed property sold to the plaintiff includes a residential house comprising of 5 rooms, kitchen, bath and toilet and the area of the house is approximately 95 square meters and rest is the vacant land, which is situated over Khasra No. 826/464 and the existing vacant land is in joint ownership along with defendants and no formal partition has taken place by metes and bounds. Further, it has been averred that defendant No.1, Nirmala, purchased one half share measuring 291 square meters from Mahendar Kaur, wife of Gurcharan Singh. Defendant No. 1 had purchased Khasra Nos. 825/464, 465, Kita 2 measuring 146 square meters comprising of a house and the rest is in the shape of vacant land i.e. 145 square meters comprising in Khasra number 826/464 which is total measuring 273 square meters. The plaintiff has 50 square meters and defendant No.1 has 145 square meters and the rest belongs to defendant No. 2.

5 It was contended by the plaintiff that defendant No. 1 threatened the plaintiff to raise the construction over Khasra No. 826/464, which is joint land and she made a request to defendant No. 1 not to raise any construction or to cause any change in the nature of the suit land till its actual

partition. However, defendant No.1 did not accede to the request of the plaintiff.

6 As per plaintiff, defendant No.1 caused change in the nature of the suit land comprised in Khasra Nos. 826/464, 466, and 467 without getting the suit land formally partitioned. The share of the plaintiff in the aforesaid joint land comes to 145 square meters and the plaintiff is in possession to the extent of 95 square meters at the spot and defendant No.1 has illegally and unlawfully encroached 50 square meters while raising illegal and unlawful construction at the spot. Therefore, under such circumstances, the plaintiff filed a suit for permanent prohibitory injunction against the defendants for restraining them from changing the nature of the suit land, raising any construction in the suit land comprised in Khata Khatauni No. 30/72, Khasra Nos. 826/464, 466, 467 Kita 3 measuring 436 square meters and out of which, plaintiff is owner in possession to the extent of 145 square meters situated at Village Kather, Tehsil and District Solan till the same is partitioned by the process of law. It was also prayed that the plaintiff is entitled for decree for mandatory injunction by getting the construction demolished at the cost and expenses of defendant No.1,

which has been raised by her during the pendency of the suit and get it restored on the same position as it was existing earlier and the possession of the same is liable to be handed over to the plaintiff.

7 The aforesaid suit came to be resisted by defendant No.1 by filing a comprehensive written statement, wherein preliminary objections with respect to the maintainability, cause of action, and enforceability etc. were raised.

8 On merits, all the averments as made in the plaint were specifically refuted and denied. It was contended that the plaintiff has suppressed the material facts from the court and has not come to the court with clean hands. As per defendant No.1, the plaintiff is not entitled for the relief of permanent prohibitory injunction and for any mandatory injunction as the alleged construction was raised prior to the institution of the present suit initially when the same was instituted. The suit of the plaintiff was dismissed on 09.03.2009 when the case was fixed for the consideration on application under order 6 rule 17 of the CPC and thereafter the plaintiff filed an application for the restoration of the suit, which remained pending for 6 years and the same was

decided in the year 2015. As such there was no pendency of the suit during the interregnum period. Therefore, the allegations that the alleged construction was raised during the pendency of the suit are false and incorrect.

9 A stand has been taken by defendant No.1 that plaintiff purchased land/house from Jivan Lata, who had also sold land to Kanta, wife of Nand Kishore. Jivan Lata and Gurcharan, father of Mahendar Kaur were the joint owners in possession of the total land/house and after the demise of Gurcharan Singh, Mahendar Kaur became joint owner. Jivan Lata and Gurcharan Singh were in their separate possession of house and land in suit and both of them had mutually settled and divided the properties, which fact is proved from the register of the registered sale deed attached by the plaintiff with the suit. Possession of the house is as per the sale deed executed by Jivan Lata in favour of plaintiff and the sale deed executed by Mahendar Kaur in favour of defendant No.1. Pursuant to sale deed, the respective owners handed over the possession separately on the spot and there exists a partition wall between two houses i.e. the house of plaintiff and house of defendant No.1 including the constructed portion of septic tank of defendant No.1 and there also exists

one water tank over the adjacent land of defendant No.1. It was stated by defendant No.1 that had there been no private/mutual partition between Mahendar Kaur and Jivan Lata, who were recorded as joint owners, then the specific portion of the house could neither be sold to plaintiff nor to defendant No.1.

10 As per defendant No.1, Jivan Lata and Mahendar Kaur had mutually divided the suit land and they were in separate and settled possession, as such they sold the specific portion of the house and land which was in their possession to the plaintiff and defendant No.1 separately. The plaintiff concealed this material fact from the court and she intends to take undue advantage of the same.

11 It was averred in the written statement that the portion of the house, where the water tank and septic of the defendant No.1 was existing on the spot, water tank was existing at the time of the registered sale deed dated 04.09.2002 and the same is evident from the map with the registered sale deed which was executed by GPA of Mahendar Kaur in favour of defendant No.1. It was stated that there was a water tank existing on the land adjacent to the portion of the house purchased by defendant No.1 from

Mahendar Kaur and it is evident from the copy of the map/plan prepared on the spot by R.P. Swami, Assistant Engineer which is also part and parcel of the registered sale deed executed in favour of defendant No.1. On the portion of the house, over which the water tank was existing on the spot at the time of the sale deed, defendant No.1 had raised pucca construction by putting a lintel on spot which work was completed by her by 05.09.2006 before the service of the summons was made on defendant No.1.

12 It was further averred that the plaintiff and defendant No.1 are in their separate and settled possession on the spot after the purchase of the portion of the houses, so the suit for permanent prohibitory injunction is not maintainable. Jivan Lata, from whom the plaintiff had purchased the specific portion of house, had also sold specific portion of the land to Smt. Kanta, over which a katcha house has been shown existing on spot in the registered sale deed, who after demolishing the said katcha house constructed a pucca house on the spot. All these facts go to show that Jivan Lata and Mahender Kaur were simply jointly recorded in the revenue record, but on the spot actually due to the mutual division and settlement, they were

in separate and settled possession over the portion of the house and land which was separately sold to the plaintiff and defendant No.1. Jivan Lata had also sold her half portion of the house along with the land to one Smt. Kanta and another to the plaintiff along with the possession on spot and likewise half-full portion belonging to Mahendar Kaur was sold to defendant No.1 through a registered sale deed along with the possession on the spot. The municipal committee had approved the site plan of defendant No.1. The defendant No.1 prayed for the dismissal of the suit as filed by the plaintiff.

13 The plaintiff filed replication to the written statement as filed by defendant No.1 and reiterated all the averments as made in the plaint.

14 The learned trial court initially framed the issues on 04.09.2008 and thereafter additional issues were framed on 18.12.2015 in the following manner:-

*“1. Whether plaintiff is entitled to a decree for permanent prohibitory injunction as prayed for?
...OPP*

1(a) Whether defendant had changed the nature of suit property and has raised construction thereupon, as alleged? ...OPP

1(b) If issue No.1 is decided in affirmative, whether the plaintiff is entitled for mandatory injunction and possession, as prayed for? ...OPP

2. Whether there is a valid legal and subsisting cause of action for bringing the present suit?...OPD

3. Whether suit is not maintainable?...OPD

4 Whether plaintiff is estopped to file present suit due to her own acts, conducts, deeds, acquiescence, admissions and omissions?...OPD

5 Whether the suit is bad for non-joinder of necessary parties?...OPD

6. Whether the suit of the plaintiff is infructuous as alleged?

...OPD

6 (a) Whether the plaintiff has suppressed the material facts and has not come to court with clean hands? ...OPD

6 (b) Whether suit has been filed just to harass the defendant and is liable to be dismissed with costs, as alleged? ...OPD

6(c) Whether parties are in separate and settled possession over the suit land, as alleged? OPD

7. Relief.”

15 The learned trial court directed the respective parties to adduce evidence in support of their contentions and vide its judgment and decree dated 31.10.2017 decreed the suit filed by the plaintiff by passing a decree whereby

defendant No.1 was restrained from causing any kind of interference in any manner over the land measuring 436 square meters comprised in Khasra Nos. 826/464, 466, 467, Kitta-3, Khata Khatauni No. 30/71, situated in Village Kather, Tehsil and District Solan, H,P, either personally or through family members except in accordance with the law. Further, the plaintiff was also held entitled to relief of mandatory injunction and defendant No.1 was directed to demolish the construction raised over the suit land other than the initial construction over land measuring 92.27 square meters as per the valuation report, Ext. PW-3/B and copy of the site plan Ext. PW-3/C within a period of four months from the date of the passing of the judgment.

16 The defendant No.1 feeling dissatisfied by the judgment and decree as passed by the learned trial Court approached the learned District Judge, Solan by instituting the appeal on 19.02.2018. The learned first appellate court vide its impugned judgment and decree dated, 19.03.2022 accepted the appeal as filed by defendant No.1 and after setting aside the judgment and decree, as passed by the learned trial Court, the suit of the plaintiff for permanent

prohibitory and mandatory injunction was ordered to be dismissed.

17 Now, feeling aggrieved, the plaintiff has approached this court by filing the instant regular second appeal, which came to be admitted on 05.09.2024 on the following substantial questions of law:-

“1. Whether the findings returned by the learned 1st Appellate Court that the construction raised by defendant No.1 was not during the pendency of the suit are perverse findings being contrary to the pleadings and evidence on record including the local commission report?

2. Whether learned 1st Appellate Court has misappreciated Ex.PW-3/A, sale deed, Ex.PW-3/B, valuation report, Ex. PW-3/C, site plan and Ex.PW-4/C, copy of jamabandi, which has materially prejudiced the case of the appellant?”

18 It is contended by Mr. Rajnish K. Lal, Advocate, learned counsel for the appellant/plaintiff that the impugned judgment and decree as passed by the learned first appellate court is erroneous and liable to be quashed and set aside. He has submitted that the learned first appellate court, while reversing the well-reasoned judgment as passed by the learned trial court, has not taken into consideration the oral

as well as documentary evidence placed on record. He has further submitted that the learned first appellate court has not taken into consideration the documents, especially Ext. PW3/A sale deed, Ext. PW3/B valuation report, Ext. PW3/C site plan, and Ext. PW4/C, the copy of the jamabandi. He has contended that the learned first appellate court has brushed aside the report of the local commissioner, as a result of which the findings as returned by the learned trial court could not have been upset in a routine manner. He would submit that after accepting the present appeal, the suit as filed by the plaintiff deserves to be decreed.

19 On the other hand, Mr. Vipin Pandit, learned counsel for respondent/defendant No.1 has defended the impugned judgment and decree, as passed by the learned first Appellate Court. He has submitted that the learned first appellate court has passed a well-reasoned judgment and it does not call for any interference. He has further submitted that the first appellate court, being the last court of fact, has taken into consideration the entire factual matrix and documentary evidence placed on record and has rightly set aside the judgment as passed by the learned trial court. He would contend that while exercising the power under Section

100 of the CPC, this court will not interfere in the well-reasoned judgment as passed by the learned first appellate court.

20 I have heard the learned counsel for the parties and have gone through the records of the case file carefully.

21 In the present case, plaintiff approached the learned trial court by filing a suit for permanent prohibitory injunction and mandatory injunction on the ground that she is co-owner in joint possession of Khata Khatauni No.30/72, Khasra Nos. 826/464, 466, 467, kita 3 measuring 436 square meters, out of which the plaintiff is owner in possession to the extent of 145 square meters, situated at village Kather, Tehsil and District Solan. As per plaintiff, she has purchased the suit land from Jivan Lata vide registered sale deed dated 1.11.2002 for a total sale consideration of Rs.1,50,000. The landed property sold to the plaintiff includes a residential house comprising of 5 rooms, kitchen, bath and toilet, and the area of the house is approximately 95 square meters and the rest is the vacant land, which is situated over Khasra No. 826/464.

22 Plaintiff has approached the learned trial Court on the ground that defendant No.1 purchased one-half share

from Mahendar Kaur to the extent of 291 square meters, and she purchased Khasra Nos. 825/464, 465, kita 2 measuring 146 square meters comprising of a house and the rest is in the shape of vacant land i.e. 145 square meters that comprises in Khasra No. 826/464, which is total measuring 273 square meters. The plaintiff has 50 square meters and defendant No.1 has 145 square meters. The plaintiff has alleged that the defendant No.1 in an illegal and unlawful manner encroached 50 square meters by raising illegal and unlawful construction at the spot and by doing so, she raised the construction more than her share on the spot and the said illegal construction is required to be demolished and removed and the same is required to be handed over to the plaintiff.

23 The said contention of the plaintiff has been specifically and vehemently denied and refuted by defendant No.1. According to her, the plaintiff purchased house from Jivan Lata and defendant No.1 purchased the suit land from Mahendar Kaur, who were joint owners in possession on the total land/house. Jivan Lata and Gurcharan Singh were in their separate possession of a house and land, as both of them had mutually settled and divided the properties and the

said fact is proved from the registered sale deed attached by the plaintiff with the suit. The sale deed executed by Jivan Lata in favour of plaintiff and the sale deed executed by Mahendar Kaur in favour of defendant No.1 show that the parties are in separate possession on the spot, as there exists a partition wall in between the two houses. In case there was no private or mutual partition inter-se the parties, then the specific portion of the house could not have been sold to the plaintiff.

24 As per the stand as taken by the defendant No.1, the original owner Jivan Lata had also sold land to one Smt. Kanta, who after demolishing the katcha house had constructed a pucca house on the spot over the portion which was purchased by her from the previous owner. As per defendant No.1, the Municipal Committee Solan had also approved the site plan of defendant No.1 and the copy of the same has also been attached therewith.

25 In order to substantiate her case, plaintiff has examined PW1 Umesh Sharma, Junior Assistant working in the office of Municipal Committee Solan. He stated that he had brought the record and as per the same, the site plan which was approved in the name of Nirmal Sharma, copy

whereof is Ext. PW1/A, is correct as per the original and the same stood approved vide resolution No. 30/ 06 dated 27.5.2006, Ext.PW1/B.

26 PW2 Hardev Singh, Ahlmad D.C. Office Solan, deposed that he has brought the requisitioned record and proved Ext.PW2/B.

27 PW3 Hari Ram, Registration Clerk, working in the office of Tehsildar, Tehsil Office Solan, had brought the requisitioned record, and as per the same, sale deed No. 812 dated 04.09.2002 was registered in their office, copy whereof is Ext.PW3/A, and along with the said sale deed, valuation report is Ex.PW3/B, which is correct as per the record. The valuation report is also accompanied with the site plan Ext. PW3/C, and as per the record, the same is correct.

28 PW4, Lakhan Pal, has filed his affidavit Ext. PW4/A, wherein he has reiterated the averments of the plaint and deposed on behalf of the plaintiff being her general power of attorney that the plaintiff has purchased 145 square meters which is situated at Mauja Kather, Tehsil and District Solan. Defendant No.1 purchased the land from Mahendar Kaur, which comes to 291 square meters. As per PW4, defendant No. 1, in an illegal manner, has encroached 50

square meters land of the plaintiff and has raised the construction of a house. He stated that she was not competent to do so. The plaintiff is entitled to complete her land, over which defendant No.1 has raised the construction of a house. As per this witness, defendant No.1 has encroached over 50 square meters of the land of the plaintiff. He prayed for decreeing the suit for permanent prohibitory and mandatory injunction.

29 In his cross-examination, PW4 stated that when defendant No.1 purchased the land, at that time, the sale deed was appended with the site plan. He stated that the land, which was purchased by them, over the same, a house had been constructed and the remaining land was vacant. He stated that after raising the construction of a house, some land was vacant and that was shown to them by the seller. He stated that he knew Smt. Kanta who is in possession of land comprising of 146 square meters. He admitted that Smt. Kanta claims herself to be owner of the land as purchased by her. He denied the suggestion that they are in possession of 145 square meters, self-stated that they are in possession of 95 square meters only. PW4 stated that only constructed portion is in their possession and there is a joint passage

over the same. As per this witness, defendant No.1 purchased 291 square meters, and he admits her to be the owner of the said land. He admitted that there is boundary wall of bricks between the houses of the parties. He stated that adjacent to the boundary, they never created any interference in the land of defendant No.1.

30 PW5 , Naresh Kumar, filed his affidavit Ext.PW5/A, wherein he deposed that the plaintiff has purchased 145 square meters land in 2002 and out of that there is a constructed house over 95 square meters and the remaining land is vacant. Defendant No.1 purchased 291 square meters of land in 2002 and in the said land there is a built-up area over 90 to 95 square meters and the remaining land is vacant. As per PW5, defendant No. 1 is non-Himachali. Therefore, except the constructed portion, she could not have purchased the vacant land, and despite that fact, she purchased the land in an illegal manner. The suit land is joint between the parties and the same has not been partitioned by metes and bounds. He stated that defendant No.1 has unauthorizedly raised construction over the vacant land of the plaintiff.

31 In his cross-examination, PW5 stated that he knew the plaintiff for the last 30 to 35 years. He stated that when the land was purchased by the plaintiff, he was not aware, who were the revenue officers of the area. He stated that plaintiff is not in possession of 145 square meters land. He does not know the khasra number of the land. He stated that plaintiff is his mother-in-law. He admitted that there is a common boundary wall between the houses of the plaintiff and defendant No.1. He deposed that he does not know that the sellers had mutually partitioned the suit land which was separated by a common boundary wall.

32 In order to rebut the case of the plaintiff, defendant No.1 examined DW1 Puran Chand Sharma. He stated that defendant Nirmal is his wife and he is her general power of attorney. As per DW1, vide registered sale deed dated 4.9.2002, they had purchased the land measuring 291 square meters over which they had constructed a house, septic tank, water tank, toilet and courtyard. As per DW1, the entire land was consisting of constructed area. There was no vacant land over the suit land. This land was purchased by defendant No.1. As per DW1, the suit land is separated by a boundary wall. The original sellers during their lifetime had

mutually partitioned the land and thereafter the parties were in separate and exclusive possession of the same. The plaintiff did not implead Kanta, wife of Nand Kishore, as a party in the present proceedings.

33 In his cross-examination, DW1 denied that when the land was purchased in the year 2002, they had raised the construction only over 92 square meters land. He admitted that in Ext.PW3/B, construction has been shown over the land measuring only 93 square meters. He stated that construction was carried out only after the approval of the map by the competent authority. He denied that after the filing of the suit, they raised the construction over the suit land. They have raised the construction of a three-storeyed house over the suit land.

34 DW2, Nirmal Kumar Gupta, has filed his affidavit Ext. DW2/A. In his deposition, he stated that he knew plaintiff and defendant No.1. The plaintiff purchased the land from Jivan Lata and defendant No.1 purchased the land from Mahendar Kaur. The sellers had partitioned the land amongst them in two parts, and thereafter, the same was divided by a brick wall. As per DW2, this brick wall is in existence for the last 25 to 30 years. On the one side of the

brick wall, there is possession of plaintiff, and on the other side, there is possession of defendant No.1. He stated that the entire property, which was purchased by defendant No.1, was under-construction and the same was not vacant on the spot.

35 The plaintiff has placed on record the copy of Ext. PW4/C, which shows that vide mutation number 668, Mahendar Kaur sold half share measuring 291 square meters to defendant No.1. In the same jamabandi, there is entry of mutation bearing No. 764, whereby Jivan Lata sold half share of 145 square meters to the plaintiff.

36 The copy of the sale deed mark A shows that Jivan Lata sold 145 square meters to the plaintiff on 31.10.2002. The copy of sale deed Ext.PW3/A shows that Mahendar Kaur vide sale deed sold the suit land to the extent of 291 square meters in favour of defendant No.1 on 04.09.2002. As per this sale deed, the vendor sold built-up structure/house and conveyed/assigned the built-up structure/house existing over portion of her land comprised in Khata Khatouni No. 32/71 and 72, Khasra Nos. 826/464, 466, 467, 825/464 and 465, kita 5 to the extent of half share, which comes to 291

square meters, out of total 582 square meters situated in Mauza Kather, Solan, Tehsil and district Solan, HP.

37 The photographs, mark DA, DB, and DC have also been placed on record, which show that there is a boundary wall of bricks between the houses of the plaintiff and defendant No.1.

38 During the pendency of the present regular second appeal, this Court, vide its order dated 05.06.2026, appointed Tehsildar Solan to visit the spot and demarcate the suit land in order to resolve the issue *inter se* the parties. With the consent of the parties, it was observed in the said order that the report, to be submitted by the local commissioner, i.e. Tehsildar Solan, shall be binding on both the parties as agreed by the learned counsel for the parties on the instructions of their clients, and none of the parties shall be entitled to file any objection to the said report.

39 Pursuant to the aforesaid order, the Tehsildar Solan visited the spot and placed on record copy of the demarcation report, which is part and parcel of the court file. As per the report of the Tehsildar Solan, he has concluded as follows:

1. Appellant i.e LRs of Ram Pyari (Mr. Lakhan Pal) has ownership of 145 Sq. Meter as per revenue

record, but is in possession of 122 Sq. Meters, only Mr. Lakhan Pal possess 23 Sq. Meters less area than the area which is in his ownership as per revenue record.

2. Respondent i.e Nirmala owns area 291 Sq. Meters as per revenue record, but, is in possession of area measuring 270.5 Sq. Meters i.e respondent is in possession of area 20.5 Sq. Meters less than the ownership she has as per revenue record.

3. Both the parties has possession less than the recorded ownership to the extent of 43.5 Sq. Metes wherein a public

path (stairs) have been built by M.C Solan and some wasteland along the path shown in Tatima as 826/464/3

Note:

For better depiction of possession of both the parties a Nazri Naksha has also been prepared for the perusal of the Hon'ble Court please, wherein, area shown in pink colour is in possession of Shri Lakhan Pal i.e LR's of Smt. Ram Pyari. Area shown in white colour in is possession of respondent Smt Nirmala Devi and area shown in green colour, there is a public path (stairs) built by Municipal Corporation, Solan & some waste land along the path.

40 The perusal of the report of the Local commissioner categorically shows that appellant (LR of original plaintiff Rampyari) is owner of 145 square meters as per the revenue

record, but is in possession of only 122 square meters. Therefore, appellant Lakhanpal, the LR of Rampyari, is having 23 square meters less area than as per his entitlement over the spot. To the similar extent, it has been observed by the Local Commissioner, that defendant No.1 Nirmala is the owner of 291 sq. mts. as per the revenue record, but she is in possession of area measuring 270.5 square meters on the spot, meaning thereby she is occupying 20.5 square meters less than her actual entitlement.

41 It is contended by Mr. Vipin Pandit, learned counsel for the respondent/defendant No.1 that in view of the report as submitted by the Tehsildar Solan, both the parties are occupying less land than their entitlement on the spot, whereby the plaintiff is occupying 23 square meters less area on the spot and the defendant No.1 is occupying 20.5 square meters less than her actual entitlement.

42 It is further contended by Mr. Vipin Pandit, Advocate, that the edifice of the argument as advanced by the learned counsel for the appellant falls to the ground that defendant No.1 has raised illegal construction over the suit land and thus, has unlawfully encroached 50 square meters owned by the plaintiff.

43 The allegation of unlawful encroachment of 50 square meters does not prove in the light of the oral as well as documentary evidence in conjunction with the report of the local commissioner in the present case. It has come on record that the boundary of the plaintiff and defendant No.1 is separated by a brick wall. The said fact has been admitted by Lakhan Pal, LR of the plaintiff, whereby he has stated that the houses of parties are divided by a boundary wall of bricks.

44 PW5 Naresh Kumar has also admitted that there is a boundary wall/common wall between the houses of the plaintiff and defendant No.1. Defendant No.1 in the written statement has categorically stated that the plaintiff and defendant No.1 are in their separate and settled possession on the spot after the purchase of the houses from the previous owners, and the portion of the houses are separated by a partition wall existing on the spot. The said fact has also been stated by the husband of the defendant No.1, Puran Chand Sharma.

45 In view of the oral as well as documentary evidence placed on record, it stands substantiated and corroborated that the original owners, namely Jivan Lata and

Mahendar Kaur, though are being reflected as joint owners in the revenue record, but actually they were in separate and settled possession on the spot.

46 The plaintiff has also taken a stand in the pleadings that she purchased a specific portion from Jivan Lata in the year 2002. Defendant No.1 in her written statement has taken a categorical stand that the plaintiff and defendant No.1 are in separate and exclusive possession of the suit property as purchased by them from respective owners, namely Jivan Lata and Mahendar Kaur. The suit land stood mutually settled and divided between the parties, and on the basis of the same, the plaintiff and defendant No.1 purchased the land/house by registered sale deeds. The sale deeds show the specific area which has been purchased by the plaintiff and the defendant No.1 from the respective sellers and the description of the khasra numbers has also been given in the same.

47 The entire facts and circumstances of the case establish that Jivan Lata and Mahendar Kaur were in their separate possession of house and land, and both of them had mutually settled and divided the properties, and based upon that, specific portions were sold to the plaintiff and

defendant. Once the plaintiff has herself taken a stand that she has purchased a specific portion of 145 square meters from Jivan Lata, it does not lie in her mouth to say that the suit land is joint inter se the parties and defendant No.1 has raised illegal construction over the joint land without partition. The allegation of the plaintiff that the defendant No.1 has illegally and unlawfully raised construction over the land being owned by her measuring 50 square meters is falsified on account of the report of the local commissioner which has been placed on record.

48 The boundary between the parties has been established by defendant No.1 and on the strength of the oral evidence and the photographs, it becomes crystal clear that there is a boundary wall between the houses of the plaintiff and defendant No.1, therefore, no question of encroachment or interference of any kind arises in the attending facts and circumstances of the case. The real grievance of the plaintiff is that her land has been reduced on the spot. In case that is the situation, then the appropriate remedy, which is available to the plaintiff is to file a partition suit, but in the present proceedings, no relief can be granted to her since she has

failed to establish and prove any kind of interference and encroachment over the suit land.

49 The plaintiff has approached the court merely on apprehension and has levelled the allegation that the defendant No.1 has encroached 50 square meters of her land, which, as observed above, stands falsified on the strength of the local commissioner's report, which otherwise establishes that defendant No.1 herself is occupying less land than her actual entitlement.

50 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.

51 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.”

52 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."

53 Perusal of the sale deeds, valuation report, and site plan reveals that plaintiff and defendant No.1 have purchased 145 square meters and 291 square meters of the

land respectively, which stand separated by a common boundary wall between the parties.

54 As far as the title of the parties is concerned, there is no dispute regarding the same, and the sale deed Ext. PW3/A, valuation report Ext. PW3/B, site plan Ext. PW3/C, and copy of jamabandi Ext. PW4/C show that the parties are owners of the suit land to the extent they have purchased it from their respective sellers.

55 The main ground on which the plaintiff had instituted the suit is that defendant No.1 has encroached and raised unlawful construction over the suit land by encroaching 50 square meters of her land. The said fact could not be established by the plaintiff in a legal and valid manner. On the contrary, as per the report of the local commissioner, defendant No.1 is occupying less area than her actual entitlement. Defendant No.1 has been able to establish that the municipal committee had duly sanctioned and granted permission for raising the construction. It has come on record that the defendant No.1 raised the construction in 2006. There is no material placed on record by the plaintiff that any construction has been raised by defendant No.1 beyond her share. Except for the bald

statement as made by the plaintiff, there is no other documentary evidence placed on record to establish that any construction has been raised by defendant No.1 during the pendency of the suit.

56 The allegations as leveled by the plaintiff seem to be an afterthought and intended to just complete her share which, as per her version, has been encroached upon by defendant No.1 , however such claim has not been established/proved by her by placing any material on record.

57 Taking into consideration the entire oral as well as documentary evidence placed on record, this court does not see any infirmity, illegality, or perversity in the impugned judgment passed by First Appellate Court. The Court below has rightly appreciated the oral as well as documentary evidence placed on record and it does not call for any interference by this court. Substantial questions of law are answered accordingly. No other point was urged by the learned counsel for the parties.

58 In view of the observations made hereinabove, this court does not find any illegality or perversity in the impugned judgment as passed by the learned first appellate Court, therefore, the instant appeal being devoid of merit, is

dismissed accordingly. Pending application(s), if any, also stands disposed of.

25th September, 2026
(pankaj)

(Romesh Verma)
Judge