

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 181 of 2026
Date of decision: 01.10.2026

Rajeev Raina ...Appellant.

Versus

Mohit & others ...Respondents.

Coram:

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

Whether approved for reporting?¹

For the appellant : Mr.Avinash Jaryal, Advocate.

For the respondents : Mr. Parveen Chauhan, Advocate, for respondents No.1 to 6.

Romesh Verma, Judge (Oral):

The instant Regular Second Appeal has been preferred against the impugned judgment and decree passed by the learned District Judge, Chamba, dated 01.04.2026, whereby the appeal filed by the defendant was dismissed and the judgment and decree as passed by learned Senior Civil Judge, Chamba, District Chamba, H.P., dated 24.07.2023, was affirmed.

2. The facts, as emerge in the present case, are that the respondents/plaintiffs filed a suit for possession by way of partition of the built-up and remaining property comprised in Khata-Khatoni No. 94/119, Khasra Nos. 877, 878 and 879, measuring 183.04 square

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

yards, situated at Mohal Chamba Sahar-1, Pargana Panjla, Tehsil and District Chamba, as per the share of the plaintiffs.

3. As per the case set up by the plaintiffs, the parties are recorded joint owners in possession of the suit land comprised in Khata-Khatoni No. 94/119, Khasra Nos. 877, 878 and 879, measuring 183.04 square yards. One Smt. Durgi Devi, wife of Shri Sarav Dayal, was also recorded as a joint owner in possession in the said Khata, but she expired and mutation of her inheritance has also not been attested, whereby her share is required to be devolved upon defendant Nos. 1 to 5 in equal shares, who are her legal heirs, i.e., sons and daughters. According to the plaintiffs, the suit property is still joint amongst the parties and the same has not been partitioned amongst them by metes and bounds. Defendant No. 6, Smt. Ambika, who was the owner in possession to the extent of 1/3rd share in the suit property, died during the pendency of the suit, issueless, her husband having predeceased her. The name of Smt. Ambika Devi, defendant No. 6, was deleted vide court order dated 21.01.2019, and her share devolved upon the plaintiffs and the defendants in equal shares. As per the plaintiffs, they hold half share in the suit property, while the remaining share belongs to the defendants.

4. In the month of April 2012, the plaintiffs requested the defendants to partition the property so that there may not be any dispute *inter se* them, but for one reason or other, they refused to do so. Under such circumstances, the plaintiffs filed a suit for possession

by passing a preliminary decree by way of partition of the suit land to the extent of half share out of the total area comprised in Khata-Khatauni No. 94/119, Khasra Nos. 877, 878, and 879, measuring 183.04 square yards, situated at Mohal Chamba Sahar-1, Pargana Panjla, Tehsil and District Chamba.

5. The suit came to be resisted by the defendants. Written statements by defendant No.1 and by defendant Nos. 2, 3 and 4 were filed separately. Defendant No. 1 took preliminary objections with respect to maintainability, cause of action and suppression of material facts in the written statement. On merits, all the averments as made in the plaint were specifically denied and refuted. It was stated that if partition is effected, in that event, defendant No.1 along with defendant Nos. 2 to 5 are entitled to receive the value of the entire structure raised by late Shri Sarav Dayal. According to defendant No.1, the entire structure was constructed by Shri Sarav Dayal of his own funds, father of defendant Nos. 1 to 5 and the plaintiffs and defendant No.6 have not spent a single penny towards the said structure, i.e., the built-up portion under partition. Defendant No.1 accordingly prayed for dismissal of the suit filed by the plaintiffs.

6. Defendant Nos.2, 3 and 4 also raised preliminary objections regarding maintainability, lack of better particulars, suppression of material facts and cause of action. It was admitted that the suit property is still joint amongst the parties and has not been partitioned amongst them by metes and bounds. It was submitted that

the entire structure under partition was constructed out of the personal funds of their father, Shri Sarav Dayal. After denying all the averments as made in the plaint, it was prayed that the suit filed by the plaintiffs deserves to be dismissed.

7. The learned trial Court framed the issues in the matter on 24.01.2019 in the following manner:

1. Whether the plaintiffs are entitled for the relief of possession of their share in the suit land by way of partition as prayed to? OPP
2. Whether the suit of the plaintiffs is not maintainable in the present form? OPD.
3. Whether the plaintiffs have suppressed the material facts from the Court? OPD.
4. Whether the plaintiffs have no cause of action to file the present suit? OPD.
5. Whether the plaintiffs have no locus-standi to file the present suit as alleged? OPD.
6. Whether the suit of the plaintiffs is bad for non-joinder of the necessary parties? OPD.
7. Relief.

8. The learned Senior Civil Judge, Chamba, District Chamba, directed the respective parties to adduce evidence in support of their contentions.

9. Plaintiff No.1, Mohit, appeared into the witness box as his own witness as PW-1 and reiterated all the averments as made in the plaint. In order to corroborate the case of the plaintiffs, PW-2 Chandan

Kumar entered the witness box and deposed on the same and similar lines as PW-1. The defendants examined DW-1 Vishav Bandhu in order to rebut the case of the plaintiffs.

10. The learned Senior Civil Judge, Chamba, District Chamba, vide impugned judgment and decree dated 24.07.2023, decreed the suit filed by the plaintiffs by passing a preliminary decree for partition.

11. Feeling dissatisfied, the defendants preferred an appeal under Section 96 of the Code of Civil Procedure before the learned District Judge, Chamba. The learned First Appellate Court, vide impugned judgment and decree dated 01.04.2026, dismissed the appeal preferred by the defendants and affirmed the findings returned by the learned trial Court.

12. Still feeling aggrieved, one of the defendants Rajeev Raina has approached this Court by filing the instant Regular Second Appeal under Section 100 of the Code of Civil Procedure.

13. It is contended by Mr.Avinash Jaryal, learned counsel for the defendant/appellant that the impugned judgments and decrees passed by the learned Courts below are erroneous and liable to be quashed and set aside. He submitted that the partition proceedings initiated by the plaintiffs are bad on account of non-joinder of necessary parties. Therefore, the suit filed by the plaintiffs/respondents ought to have been dismissed by the learned Courts below. He further

submitted that after allowing the instant Regular Second Appeal, the suit filed by the plaintiffs/respondents deserves to be dismissed.

14. On the other hand, Mr. Praveen Chauhan, learned counsel for respondents No.1 to 6, has defended the impugned judgments and decrees passed by the learned Courts below. He would submit that while exercising jurisdiction under Section 100 of the Code of Civil Procedure, this Court will not interfere with the well reasoned judgments and decrees passed by the learned Courts below. He submitted that a preliminary decree was passed by the learned Courts below on the basis of the revenue record admitted by the respective parties and there is no dispute regarding the same. Therefore, there is neither any error, perversity nor ambiguity in the findings returned by the learned Courts below.

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

16. With the consent of the parties, the present appeal is finally heard on the following substantial question of law:

1. Whether suit for partial partition is maintainable when all properties not included in the suit for partition jointly owned and possessed by the co-sharers?

17. The parties had placed on record documentary evidence, Ext. DW-1/A, Ext. DW-2/A, Ext. DW-4/A, Ext DW-5/A, Ext. DW-6/A and Ext. PW-1/B, being copies of the Jamabandis pertaining to the suit

land. The presumption of truth is attached to the said revenue record, which clearly shows the parties to be the joint owners of the suit property.

18. Though the defendants before the learned trial Court half-heartedly took a plea that defendant No.6, Ambika, had executed a Will bequeathing her property in favour of defendant No. 2, no material was placed on record to plead and prove the same. Defendant No.2 failed to establish the veracity and validity of the said Will. Therefore, the learned Courts below have rightly disbelieved the same. The revenue record categorically reveals that the parties are co-sharers in the suit property and to the extent of their shares, the preliminary decree was required to be passed by the learned trial Court.

19. In the present case, the only contention raised by the learned counsel for the appellant is that the suit instituted by the plaintiffs for partition is bad for non-joinder of necessary parties. Therefore, it was urged that the present appeal deserves to be allowed and the suit filed by the plaintiffs for passing of a preliminary decree deserves to be dismissed.

20. This Court has scanned the entire case file and the said issue with respect to non-joinder of necessary parties was framed by the learned trial Court as Issue No. 6, which reads as follows:

“Whether the suit of the plaintiffs is bad for non-joinder of the necessary parties? OPD”

21. The finding returned by the learned trial Court on the said issue was that the same was not pressed by the defendants. At this stage, that too in a Regular Second Appeal, once the said issue was not pressed by the defendants/appellant before the learned Courts below, this plea is not available to the appellant in the attending facts and circumstances of the case.

22. It has been contended by the learned counsel for the appellant that partial partition is not permissible in the present case and that the learned Courts below failed to consider that the plaintiffs in their suit did not include Khasra Nos.883 and 884, which are also joint amongst the parties. A perusal of the revenue record reveals that Khasra Nos. 883 and 884 are not only joint amongst the plaintiffs and the defendants, but also with other co-sharers who are not parties to the present proceedings. Moreover, Khasra Nos. 883 and 884 are common toilet and common path used by all co-sharers recorded in the revenue record. The said fact was clearly admitted by DW-1 Vishav Bandhu in his testimony. Therefore, the contention raised by the learned counsel for the appellant that partial partition is not permissible does not hold good in view of the fact that Khasra Nos. 883 and 884 are not exclusively joint between the parties so as to be liable to be included in the suit filed by the plaintiffs. Consequently, the plea taken by the present appellant in the present case is liable to be rejected.

23. This Court is in agreement with the concurrent findings returned by the learned Courts below in passing a preliminary decree for partition and does not see any infirmity or illegality in the same and the same are legal, valid and sustainable in the eyes of law. The case file shows that the partition suit was instituted in the year 2013 and despite elapse of more than 13 years, the case has not reached to its logical end on one pretext or the other. Therefore, this Court is of the opinion that no illegality or perversity has been committed by the learned Courts below and their findings do not call for any interference in the present case.

24. It has been jointly contended by the learned counsel for the parties that probably the share of plaintiff No.5 has been wrongly determined and adjudicated by the learned Courts below. This Court is not entering into the said factual matrix and it is for the parties to approach the learned trial Court for rectification of the said fact. The present appeal, being devoid of any merit, deserves to be dismissed.

25. The contention raised by the learned counsel for the appellant does not hold good in view of the law laid down by this Court in ***RSA No. 565 of 2012, titled as Pradeep Chand Sharma and others vs. Budhi Devi and others***, decided on 01.04.2017, which reads as follows: -

"31. Learned counsel for the respondents has vehemently argued that the properties in village Ruaru in Mauza Kot Kandi as reflected in jamabandi Exts.DW-1/C, DW-1/D, DW-1/E, DW-1/F, DW-1/G, DW-1/H and Ext.DW-

1/J are joint family properties, but have not been included in the suit and, therefore, the suit being one for partial partition ought to be dismissed.

32. *I have gone through the aforesaid documents, a perusal whereof reveals that the properties as mentioned therein again do not exclusively belong to either of the parties, but are even owned and possessed by the persons who have no relationship with the parties to the suit.*

33. *Once that be so, then obviously, the land of Village Ruaru could not have been included in the suit. Further the suit cannot be held to be one for partial partition because even as a Rule of Hindu law, if the property is not joint family property and the parties are not coparceners but are only co-owners or tenants-in-common, the rule of partition is not so rigid and even partial partition can be allowed. It is for the party contesting such partition to prove that much inconvenience shall be caused to them, otherwise in such given cases, it is then only a rule of processual law.”*

26. The Hon'ble Apex Court has repeatedly held that the scope of interference by the High Courts especially while exercising power under Section 100 of the Code of Civil Procedure is very limited. The High Courts should not interfere in concurrent findings of facts until and unless the findings as returned by the Courts below are perverse or without any evidence.

27. In the present case, there are concurrent findings of fact rendered by the learned Courts below and the scope of interference in the concurrent findings of fact, as per the various judgments of the Hon'ble Apex Court, is very narrow and limited. The Hon'ble Apex Court has held in its various decisions that the High Court cannot re-

appreciate the evidence to substitute its own view for a plausible finding of fact arrived at by the first appellate court.

28. Reference in this regard is made to the judgment of the Hon'ble Apex Court in ***Hero Vinoth (minor) vs. Seshammal, (2006) 5 SCC 545*** 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 xxxxxx

23. To be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law

"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."

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

"16. Whether D-1 and D-2 were able to discharge the aforesaid burden is a question of fact which had to be determined by a court of fact after appreciating the evidence available on record. Under CPC, a first appellate court is the final court of fact. No doubt, a second appellate court exercising power(s) under Section 100 CPC can interfere with a finding of fact on limited grounds, such as, (a) where the finding is based on inadmissible evidence; (b) where it is in ignorance of relevant admissible evidence; (c) where it is based on misreading of evidence; and (d) where it is perverse. But that is not the case here.

17. In the case on hand, the first appellate court, in paragraph 29 of its judgment, accepted the endorsement (Exb. A-2) made on the back of a registered document (Exb. A-1) after considering the oral evidence led by the plaintiff appellant and the circumstance that signature(s)/thumbmark of D-1 and D-2 were not disputed, though claimed as one obtained on a blank paper. The reasoning of the first

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

18. Once the finding regarding payment of additional sum of Rs.1,95,000 to D-1 and D-2 recorded by the first appellate court is sustained, there appears no logical reason to hold that the plaintiff (Annamalai) was not ready and willing to perform its part under the contract particularly when Rs. 4,70,000, out of total consideration of Rs. 4,80,000, was already paid and, over and above that, additional sum of Rs.1,95,000 was paid in lieu of demand made by D-1 & D-2. This we say so, because an opinion regarding plaintiff's readiness and willingness to perform its part under the contract is to be formed on the entirety of proven facts and circumstances of a case including conduct of the parties. The test is that the person claiming performance must satisfy conscience of the court that he has treated the contract subsisting with preparedness to fulfill his obligation

and accept performance when the time for performance arrives.”

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

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

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

(Romesh Verma)
Judge

1st October, 2026.
(vt)