

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 284 of 2023
Date of decision: 21.08.2026

Lachhman & Lachhmi Nand & others ...Appellants.

Versus

Munshi & others ...Respondents.

Coram:

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

Whether approved for reporting?¹

For the appellants : Mr. Malay Kaushal and Mr. Pankaj Thakur, Advocates.

For the respondents : Mr.Sanjeev Kuthiala, Senior Advocate with Ms. Tamanna Sharma, Advocate, for respondents No.1, 3, 5(ii), 5(iii), 6 to 12, 14, 15(i), 15(ii) and 18(ii).

Mr. Kamal Sharma, Advocate vice Mr.Naresh K. Sharma, Advocate, for respondents No.23, 24, 25(i) and 25(ii).

Romesh Verma, Judge (Oral):

The instant Regular Second Appeal arises out of the judgment and decree as passed by the learned District Judge, Bilaspur, dated 23.08.2023, whereby the appeal filed by the plaintiffs was dismissed, affirming the findings returned by the learned Civil Judge, Bilaspur, dated 18.03.2020, whereby the suit instituted by the plaintiffs/appellants came to be dismissed.

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

2. The facts, as emerge in the present case, are that the plaintiffs/appellants filed a suit for permanent prohibitory injunction restraining the defendants from changing the nature of the suit land, digging foundations, raising any fresh construction or structure on the best portion of the suit land near the road or any part thereof and further restraining the defendants from selling, mortgaging or gifting the best portion of the suit land, cutting and removing plants and trees, and dispossessing the plaintiffs in any manner. In the alternative, it was prayed that in case the defendants forcibly raise any fresh construction on the suit land, in that event the suit land be restored to its original position by granting the relief of vacant possession after dismantling the structure, etc., at the costs and expenses of the defendants.

3. As per the case as set up by the plaintiffs, it has been averred that the plaintiffs are exclusive owners in possession of the suit land to the extent of their respective shares as co-sharers along with other co-sharers comprised in Khewat No. 169, Khatauni No. 183, Khasra Nos. 511, 519, Kita 2, measuring 28-3 bighas, situated at Village and Post Office Sihra, Pargana and Tehsil Sadar, District Bilaspur, and that the suit land is being used and enjoyed by the plaintiffs and others as joint land according to the respective shares of the co-sharers, as the suit land has not been legally partitioned. According to the plaintiffs, the defendants have no right, title, or

interest to occupy the best portion of the suit land for their own use, to raise any fresh construction or structure on the best portion of the suit land or to sell the same to anyone else. Further, it has been averred in the plaint that the suit land has not been partitioned by metes and bounds, but the same is being used and enjoyed by every co-sharer according to their respective shares as per mutual settlement and adjustment. Therefore, it was pleaded that the defendants have started interfering with the peaceful possession and ownership of the suit land and are attempting to forcibly occupy the best portion of the suit land for raising construction and for their individual use with selfish ends. When the defendants were asked to refrain from doing so, they categorically stated that fresh construction would be raised by them on the best portion of the suit land and that the plaintiffs would be dispossessed forcibly from the suit land to the extent of their respective shares.

4. Under such circumstances, the plaintiffs filed a suit for permanent prohibitory injunction and, in the alternative, sought a decree of vacant possession of the suit land and restoration of the same after dismantling the structure, etc., entirely at the risk and cost of the defendants, along with the relief of compensation for the damages caused to the plaintiffs.

5. The suit filed by the plaintiffs/appellants came to be resisted by defendants No.1, 3, 5 to 8, 10, 12, 14 to 16, 18(ii) by filing

written statement, wherein preliminary objections with respect to maintainability, cause of action, estoppel, non-joinder, etc. were raised. On merits, it has been averred that the plaintiffs are neither owners nor in possession of any share in the suit land and that they are not co-sharers. It has been stated that the defendants have been in possession of the suit land since 14.01.1969, as the predecessor-in-interest of the plaintiffs sold the same and got the factum of sale incorporated in a memorandum dated 14.01.1969. It was further stated that the suit land has been developed by the defendants and construction has already been raised over the same. The predecessor-in-interest of the plaintiffs admitted that the revenue entries in their names are incorrect. As per the defendants, since the plaintiffs have no right, title or interest, therefore, they cannot claim partition of the land in any manner. It was denied that there was any mutual settlement or adjustment made inter se the parties, except for the oral sale and a memorandum of sale dated 14.01.1969 which has been placed on record. As per the defendants, they have raised construction over the suit land, which is very old. After refuting all the averments made in the plaint, the defendants prayed for the dismissal of the suit filed by the plaintiffs.

6. A separate written statement was filed by proforma defendants No. 21 to 24. The said defendants admitted the claim of the plaintiffs and prayed for the decreeing of suit.

7. The learned trial court framed the issues on 26.09.2013 in the following manner:

1. Whether the defendants be restrained from making any sort of interference in any manner over the suit land so owned and possessed by the plaintiffs including alienation of suit land in any manner? ...OPP.
2. Whether the suit is not maintainable in the present form? ...OPD.
3. Whether the plaintiffs have not approached the Court with clean hands? ...OPD.
4. Whether suit is not properly valued for the purpose of Court fee and jurisdiction? ...OPD.
5. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? ...OPD.
6. Whether the suit is nullity being against dead persons? ...OPD.
7. Whether the plaintiffs are out of possession, as such, not entitled for injunction? ...OPD
8. Relief.

8. Learned trial Court directed the respective parties to adduce evidence in support of their contentions, and vide its judgment and decree dated 18.03.2020, the learned Civil Judge, Bilaspur, District Bilaspur, dismissed the suit filed by the plaintiffs.

9. Feeling dissatisfied, the plaintiffs approached the learned District Judge, Bilaspur, by filing an appeal under Section 96 of the Code of Civil Procedure on 30.07.2020. The learned first appellate Court, vide its impugned judgment and decree dated 23.08.2023,

affirmed the findings of the learned trial court and dismissed the appeal preferred by the plaintiffs/appellants.

10. Still aggrieved, the plaintiffs have approached this Court by filing the present Regular Second Appeal under the provisions of Section 100 of the Code of Civil Procedure.

11. It is contended by Mr. Malay Kaushal, learned counsel for the appellants/plaintiffs, 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 learned courts below have failed to take into consideration the oral as well as documentary evidence placed on record, as a result of which great prejudice has been caused to the plaintiffs/appellants. He further submitted that there are arguable points in the present case, therefore, after accepting the present Regular Second Appeal, the suit instituted by the plaintiffs deserves to be decreed.

12. On the other hand, Mr. Sanjeev Kuthiala learned Senior Counsel, assisted by Ms. Tamanna Sharma, learned counsel for the respondents/defendants, has defended the impugned judgments and decrees passed by the learned courts below. He submitted that this Court will not interfere with the concurrent findings of fact returned by the learned Courts below and that the same are legal, valid and sustainable, leaving no scope for interference.

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

14. With the consent of the parties, the present Regular Second Appeal is finally heard on the substantial question of law:

Whether the impugned Judgments and Decrees passed by the learned First Appellate Court as well as by the Ld. Trial Court are against the law and facts on the file and based on complete misreading and mis-appreciation of evidence, both oral and documentary as well as the pleadings on record and the findings are perverse?

15. In the present case, the suit of the plaintiffs is primarily for grant of permanent prohibitory injunction and, in the alternative, for vacant possession on the ground that the plaintiffs are exclusive owners in possession of the suit land to the extent of their respective shares as co-sharers along with other co-sharers comprised in Khewat No. 169, Khatauni No. 183, Khasra Nos. 511, 519, Kita 2, measuring 28-3 bighas, situated at Village and Post Office Sihra, Pargana and Tehsil Sadar, District Bilaspur.

16. As per the plaintiffs, the suit land is being used and enjoyed by the plaintiffs and other co-sharers as joint land according to their respective shares. The suit land has not been legally partitioned by metes and bounds and till such time the suit land is partitioned, none of the co-sharers can be permitted to raise any construction over the best and valuable portion of the suit land. According to the

plaintiffs, the defendants have started interfering with the peaceful possession and ownership of the suit land to the extent of the respective shares of the plaintiffs and are attempting to forcibly occupy the best portion of the suit land for raising construction and for their individual use with selfish ends. When the defendants were confronted and restrained from doing so, they flatly refused and rather threatened the plaintiffs with dire consequences.

17. The defendants have contested the suit of the plaintiffs on the ground that on the basis of the memorandum dated 14.01.1969, they are the owners of the suit property and the plea set up by the plaintiffs of being co-sharers is totally false and incorrect. It is the case of the defendants that they have been in possession of the suit land since 14.01.1969, as the predecessor-in-interest of the plaintiffs had sold the same and got the factum of sale incorporated in a memorandum dated 14.01.1969. Thereafter, the suit land was developed by the defendants and construction had already been raised over the same. The said fact was accepted and acknowledged by the predecessor-in-interest of the plaintiffs, who admitted that the revenue entries in their names are incorrect.

18. In order to substantiate their case, the plaintiffs examined PW-1, Lachhman alias Lachhmi Nand, who filed his affidavit, Ext.PW-1/A. In the affidavit, he stated that plaintiff No.1 and the other plaintiffs are joint owners in possession of the suit land to the extent of their

shares along with the defendants and proforma defendants over the suit land comprised in Khewat No. 169, Khatauni No. 183, Khasra Nos. 511, 519, Kita 2, measuring 28-3 bighas, situated at Village and Post Office Sihra, Tehsil Sadar, District Bilaspur. The defendants are threatening to interfere with the suit land by cutting trees, digging, and changing the nature of the suit land, and attempting to alienate the same without effecting partition lawfully. He stated that on 05.08.2009, the defendants entered upon the suit land, started digging foundations forcibly, threatened to continue the work with labourers and masons, and sought to grab the suit land forcibly for fresh construction.

19. In cross-examination, PW-1 stated that the uncle of Chandu Ram was Chhichhu Ram. He stated that Chandu Ram was his father and that he expired in 2001. He admitted that they are residents of Mauza Kunala and have had their abadis there since the time of their grandparents. He stated that Chhichhu Ram never cultivated the land situated at Kunala. He admitted that the entire land is being cultivated by them, but self-stated that they cultivate the land situated at Sihra. He stated that he does not know that on 14.01.1969, a writing was executed between his father Chandu Ram and Chhichhu Ram. He stated that he does not know whether the said writing was scribed by petition writer Sant Ram. As per PW-1, Tulsi Ram was a resident of Sihra. He stated that he does not know whether the writing from point D to D is correct or not, but admitted that over the writing

Ext. DA, Chandu Ram had appended his thumb mark. He stated that the signatures of Tulsi Ram, Kishan Lal, Damodar are fictitious.

20. He further stated that the signatures of Sant Ram and the seal are also fictitious. He denied that Chandu Ram had acknowledged that there was a mutual understanding between Chandu Ram and Chhichhu Ram. He stated that his father never informed him about the execution of the said writing. He denied that after the death of his father, the present suit was instituted by the plaintiffs out of greed. He admitted that his father, from 1969 till his death in 2001, never challenged the said writing. He stated that he cannot say whether his father had relinquished the suit land in favour of his brother. He denied the suggestion that the defendants have been in possession of the suit land since the time of their forefathers.

21. PW-2 is Bohra, who filed his affidavit, Ext. PW-2/B, reiterating the averments as made by PW-1. He stated that plaintiff No.3 and the other plaintiffs are joint owners in possession of the suit land and that the defendants are threatening to dispossess the plaintiffs and cause interference with the suit land by cutting trees, digging, and changing the nature of the suit land, and attempting to alienate the same without getting it partitioned lawfully.

22. In cross-examination, he stated that his *abadi* is situated at Mauza Kunala. He admitted that the suit land is situated at Sihra and admitted it to be correct that the defendants have their houses

over the same. He stated that he does not know whether on 14.01.1969, a writing was executed between Chandu Ram, the father of the plaintiffs, and Chhichhu Ram, whereby the suit land was transferred in favour of Chhichhu Ram and others. He stated that he does not know whether the said writing was scribed by a petition writer in the presence of witnesses. He admitted that his father, during his lifetime, did not file any suit. He denied that the defendants had given the suit land to Chandu Ram and others only for its maintenance.

23. In order to rebut the case of the plaintiffs, the defendants examined DW-1 Kanshi Ram. In his deposition, he stated that Tulsi Ram was his father and that he was the Lambardar of Village Sihra. He stated that Tulsi Ram had appended his signatures as an attesting witness on agreement Mark 'A', which is Ext. DW-1/A. He stated that he is well conversant with the handwriting of his father and that his father expired on 30.11.2011. In cross-examination, he stated that he does not know about the suit land.

24. DW-2 is Rajesh Kumar, son of late Shri Krishnu. He stated that his father, late Shri Krishnu Lal, was a resident of Village Kheriyan and that his father was an attesting witness to the writing and has identified the signatures of his father. His father expired on 17.07.2002. In cross-examination, he stated that he does not know about the suit land.

25. DW-3 is Navneet. He stated that his father's name was Damodar, who was a resident of Village Nog and expired in 2003. He identified his father's signatures on the document Ext 'DA'. He stated that he recognized the signatures of his father on the said document.

26. DW-4 is Brij Mohan Kundi, Petition Writer, who stated that he has been working as a Petition Writer for the last 53 years. He stated that Pandit Sant Ram was also working as a Petition Writer along with him. He stated that he had seen him writing and preparing documents. He stated that on document Ext. 'DA', he can identify the handwriting of Petition Writer Pandit Sant Ram and that the names of the witnesses have been scribed in the handwriting of Pandit Sant Ram.

27. DW-5 is defendant Munshi Ram, who reiterated the averments made in the written statement. He stated that Chhichhu Ram was his predecessor and that they have been residing in Village Sihra since the time of their forefathers. He stated that the suit land has been in their possession since time immemorial. The plaintiffs are the successors of late Shri Chandu and are residents of Village Kunala. As per DW-5, the plaintiffs never resided in Village Sihra, nor did they cultivate the suit land. He stated that the house and *abadi* of the plaintiffs are not situated over the suit land. He stated that a settlement was arrived at between the forefathers of the parties, pursuant to which Ext. 'DA' dated 14.01.1969 was executed. Ext. 'DA'

was handed over to them by their predecessors. He stated that the predecessor-in-interest of the plaintiffs acknowledged and stipulated in the writing that the suit land had been given to Chhichhu Ram. It was also incorporated in the writing by Chandu Ram that the land never remained in their possession, that they have no right, title, or interest over the same, and that Chhichhu Ram and others shall have the right to get the suit land mutated in their favour. Chandu Ram expired in the year 2001 and from 1969 until his death, he never assailed the validity of Ext. 'DA' before any competent court of law. The plaintiffs are bound by the terms and conditions stipulated in Ext. 'DA', and they have no right, title or interest over the suit land. In cross-examination, the plaintiffs failed to extract anything fruitful in their favour.

28. The defendants, in order to substantiate their defence, have proved document Ext. 'DA', the agreement/settlement executed between the parties. The said document was witnessed by Tulsi Ram, Damodar, and Krishan Lal, scribed by Pandit Sant Ram and duly thumb-marked by Shri Chandu.

29. The defendants have duly proved the execution of the said document by examining DW-1 Kanshi Ram, son of Shri Tulsi Ram, DW-2 Rajesh Kumar, son of Shri Krishnu; DW-3 Navneet, son of Shri Damodar and DW-4 Brij Mohan Kundi, Petition Writer.

30. The plaintiffs approached the court seeking a decree of permanent prohibitory injunction and vacant possession being co-

sharers. However, in order to demonstrate entitlement to the grant of a decree of permanent prohibitory injunction, the plaintiffs failed to establish their title over the suit land. Once the defendants have been able to substantiate their defence by proving the due execution of Ext. 'DA', the stand and case as set up by the plaintiffs is falsified and found to be totally incorrect.

31. Interestingly, the predecessor-in-interest of the plaintiffs, late Shri Chandu Ram, during his lifetime from 1969 to 2001, never assailed the validity of the said document for over 30 years. It appears that the case projected by the plaintiffs is an afterthought, prejudicing the rights of the defendants/respondents.

32. On the strength of Ext. 'DA', the defendants have established that the suit land was given to their predecessor, late Shri Chhichhu and by virtue thereof, they are in exclusive possession and ownership of the suit land.

33. The oral evidence, in conjunction with Ext. 'DA', proves the case of the defendants and there is not an iota of evidence to demonstrate that the plaintiffs, as of today, are co-sharers in the suit land in any manner. Once the plaintiffs failed to establish their title, the suit for injunction and vacant possession, in the considered opinion of this Court, was rightly dismissed by the learned Courts below.

34. There are concurrent findings of fact returned by the learned Courts below, whereby, after considering the oral as well as

documentary evidence on record, both the learned trial court and the learned first appellate court declined relief to the plaintiffs/appellants. The findings returned by the learned courts below are purely factual and the appellants have failed to establish any right, title or interest over the suit land. Therefore, this Court finds no merit in the present appeal. Even otherwise, the Hon'ble Apex Court has held that the scope of interference in a Regular Second Appeal under Section 100 of the Code of Civil Procedure is very limited and narrow.

35. The Hon'ble Supreme Court while dealing with scope of interference under Section 100 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."

36. 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."

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

38. 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.

39. 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

21thAugust, 2026.
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