2026:HHC:49250

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 209/2009

Decided on: 31.10.2026

Parmeshwari Devi (deceased) through her LRs .....Appellants

Versus

Sant Ram (deceased) through his LRs & ors. .....Respondents

Coram

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

Whether approved for reporting ?[1]

For the appellants: Mr. Pawan Gautam, Advocate.

For the respondents: Mr. Ajay Sharma, Sr. Advocate with Mr. Atharv Sharma, Advocate, for respondent No.1(a).

Mr. Sanjeev Kuthiala, Sr. Advocate with Ms. Tamanna Sharma, Advocate, for respondent Nos. 2 and 3.

Romesh Verma, Judge (oral)

The present appeal arises out of the judgment and decree, dated 02.02.2009, as passed by the learned Additional District Judge, Una, H.P. whereby the appeal preferred by the original predecessor-in-interest of the present appellants/original plaintiff, namely, Parmeshwari Devi, has been dismissed and the judgment and decree,

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

dated 28.01.2006, dismissing the suit of the plaintiff, as passed by the learned Civil Judge, (Junior Division), Court No.1, Amb, District Una, H.P., have been affirmed.

2 The facts, as emerge in the present case, are that the predecessor-in-interest of the present appellants, Parmeshwari Devi, filed a suit for declaration to the effect that plaintiff and defendant No. 1 are joint owners in possession of the land measuring, 0-37-81 hectares, comprised in Khewat No. 258, Khatoni No. 386, Khasra Nos. 938, 939, 949, 950, 951, 952 and 955, situated in Mahal Adarsh Nagar, Amb, Tehsil Amb, Distt. Una (H.P), as per Nakal Jamabandi for the year 1996-97 and the sale deed No.174 dated 29.1.2002 executed by defendant No.1 in favour of defendant Nos. 2 and 3 is null and void, illegal & not binding on the rights, title and interest of the plaintiff and defendant No.1 with consequential relief of permanent injunction restraining defendant Nos. 2 and 3 claiming any right, alienating and raising any sort of construction over the suit land and in the alternative, suit for possession under Sections 5, 34 and 35 of the Specific Relief Act.

3 As per the case, as set up by the plaintiff, the suit land was allotted to defendant No.1 under the Landless Persons Scheme by the Himachal Pradesh Government.

Defendant No.1 was not competent to alienate the suit land till the life of his wife or till the period of 20 years whatever the necessity. The plaintiff is the legally wedded wife of defendant No. 1 and no judicial separation or divorce has ever taken place between them. The plaintiff has right to succeed to the life interest created by the State of H. P. in favour of the plaintiff.

4 It was averred in the plaint that civil suit for injunction claiming the right has also been filed by the plaintiff and despite the pendency of the suit, defendant No.1 sold the suit land for sale consideration of Rs.2 lacs to defendant Nos.2 and 3, who, at the instance of the defendant No.1 started threatening to take forcible possession and alienate the suit land. The plaintiff requested the defendants many time to restrain themselves from their illegal design, but all in vain. Hence, the plaintiff filed the suit for declaration, as aforesaid.

5 The aforesaid suit came to be resisted by the defendants by filing separate written statements. Defendant No.1 filed written statement, wherein preliminary objections with respect to locus standi, estoppel, cause of action etc. were raised. On merits, all the allegations, as made in the plaint, were specifically denied and refuted. It was averred

that the plaintiff about 33 years back deserted defendant No.1 and thereafter permanently started residing with one Babu Ram in one room and under one roof. The plaintiff never resided with defendant No.1 for the last 33 years and plaintiff is residing with her two sons born in the house of Babu Ram and after death of Babu Ram, the plaintiff started claiming the suit land in an illegal manner. The plaintiff has no right or title to claim anything from defendant No.1 because she never considered him as her husband for the last 33 years. Neither she served defendant No.1 nor provided any basic amenities to him, which were required to be provided by her being legally wedded wife. Therefore, it was contended that the suit as filed by the plaintiff is without any basis and merit and the same deserves to be dismissed.

6 As regards defendant Nos. 2 and 3, they filed their written statement by raising preliminary objections qua maintainability, estoppel, limitation, non-joinder and mis-joinder of necessary parties etc. On merits, it was stated by defendant Nos. 2 and 3 that they are bonafide purchasers and in possession of the suit land for a sale consideration of Rs.2 lacs, which they paid to general power of attorney of defendant No.1 and the same fact stood admitted by

defendant No.1 also after making due enquiry in the revenue record. As per defendant Nos. 2 and 3, there is no rider or embargo on the rightful owner of the suit property. The plaintiff has got no cause of action against defendant Nos. 2 and 3 and, thus, her suit deserves to be dismissed.

7 The plaintiff filed replication(s) to the written statement(s) and all the averments, as made in the plaint, were reiterated.

8 The learned trial court framed the issues on 14.01.2003 in the following manner:

> *1. Whether the plaintiff and defendant Sant Ram are joint owners in possession of the suit land?OPP*
> *2. Whether sale deed dated 29.1.2002 executed by defendant no.1 in favour of defendants No.2&3 is null and void as alleged.? OPP.*
> *3. Whether the defendants have threatened to raise construction over suit land in an illegal manner as alleged? OPP*
> *4. Whether the plaintiff has no locus-standi to file the suit?OPD.*
> *5. Whether plaintiff is estopped by his act or conduct to file suit?OPD.*
> *6. Whether the plaintiff has no cause of action to file suit?OPD*
> *7. Relief.*

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

corroborate their respective case. The learned trial court vide its judgment and decree dated 28.01.2006 dismissed the suit of the plaintiff.

10 Feeling aggrieved by the judgment and decree, dated 28.01.2006, the plaintiff/appellant preferred an appeal before the learned first appellate Court, which too came to be dismissed vide judgment and decree dated 02.02.2009.

11 Still feeling dissatisfied by the aforesaid judgments and decrees, plaintiff/appellant has preferred the present regular second appeal under Section 100 of the CPC, which came to be admitted on 07.05.2009 by this Court on the following substantial questions of law:-

> (a) Whether respondent No.1 Sant Ram could alienate the suit land to the other respondents in flagrant violation of the Scheme under which it was allotted to him by the Government and which was indeed for the benefit of the members of the family and specially the appellant, who is a legally wedded wife of the respondent Sant Ram?
>
> (b) Whether the appellant can be said to have lost the status of wife of respondent Sant Ram simply for the reason that she had been living separate from him for some time and when there is no decree of divorce etc. between them?

12 It is contended by Mr. Pawan Gautam, Advocate, appearing for the appellants, that the impugned judgments and decrees, as passed by the learned courts below, are erroneous and thus, liable to be quashed and set aside. He has submitted that the learned Courts below have not appreciated the real point of controversy and have mis-interpreted and mis-construed the oral as well as documentary evidence, as a result of which, great prejudice has been caused to the appellants. He has further submitted that after accepting the instant appeal, the suit, as filed by the plaintiff, deserves to be decreed.

13 On the other hand, Mr. Ajay Sharma, learned Senior counsel, assisted by Mr. Atharv Sharma, Advocate, appearing for respondent No.1(a), has defended the impugned judgments and decrees as passed by the learned courts below. He has submitted that this Court while invoking provisions of Section 100 of CPC will not interfere with the concurrent findings of fact, as rendered by the learned Courts below and, thus, prayed for dismissal of the instant appeal.

14 Similarly, Mr. Sanjeev Kuthiala, learned senior counsel, assisted by Ms. Tamanna Sharma, Advocate, appearing for respondent Nos. 2 and 3, has also supported

the impugned judgments and decrees, as concurrently passed by the learned Courts below. He would submit that since respondent Nos. 2 and 3 being bona fide purchasers are rightful owners, therefore, no right subsists in favour of the plaintiff and the learned Courts below have rightly come to the conclusion that she has not been able to make out a case for grant of decree, as sought in the plaint.

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

16 The plaintiff had approached the learned trial court on the ground that being legally wedded wife of defendant No.1, Sant Ram, sale deed, having been executed by defendant No.1 in favour of defendant Nos. 2 and 3 is null and void as there is embargo of 20 years with respect to alienation of the suit land, which was admittedly granted by the State of Himachal Pradesh being landless person.

17 The precise case of the plaintiff is that the State of Himachal Pradesh had granted the suit land to defendant No.1, Sant Ram, being landless person and he was prohibited from alienating the same for a period of 20 years as per the Scheme, as envisaged by the State of Himachal Pradesh. As per the plaintiff, alienation has taken place during subsistence of the prohibition, therefore, the sale deed, as

executed by defendant No.1 in favour of defendant Nos. 2 and 3 is bad in the eyes of law.

18 The defendants have refuted and denied all the averments as made in the plaint. It was contended by defendant No.1 that the plaintiff was residing with one Babu Ram for the last 33 years in one room and under one roof and out of cohabitation, two sons were born. After death of Babu Ram, in the copy of Nakal Pariwar Register, the plaintiff is being shown as head of the family along with two sons who were born out of loins of Babu Ram and plaintiff. As per defendant No.1 since she failed to serve defendant No.1, therefore, she has got no right, title or interest over the suit property. On the other hand, defendant Nos. 2 and 3 pleaded that being bona fide purchasers, they have become owners of the suit land and the plaintiff has got no cause of action against them, therefore, the suit as filed by her deserves to be dismissed.

19 The plaintiff in order to substantiate her claim stepped into the witness box as PW1 and tendered in evidence her affidavit, wherein all the averments as made in the plaint were reiterated. It was stated in the affidavit that being a landless person, defendant No.1 was allotted suit land, but the same was allotted to him subject to the

stipulation that it could not be alienated for another 20 years or during the lifetime of his wife. Defendant No.1 wrongly and illegally sold the suit land in favour of defendant Nos. 2 and 3, who started threatening her to dispossess her from the suit land.

20 In her cross-examination, she admitted that after death of Babu Ram, his estate was inherited by Rashpal and Sharwan Lal. She admitted that after the death of Babu Ram, her another son, Puran Chand did not get anything. She admitted that she is residing in the house of Babu Ram for the last 30 years. She admitted that during the lifetime of Babu Ram, he used to maintain her along with Rashpal and Sharwan Lal. She admitted that in the ration card of Babu Ram, she has been shown along with her sons namely Rashpal and Sharwan Lal. She admitted that when she was residing in the house of Babu Ram, during that period Sharwan Lal and Rashpal were born. She denied the suggestion that when Puran Chand was about 6 months old, she left the house of her husband (defendant No.1). She does not know when defendant No.1 sold the suit land to defendant Nos. 2 and 3. She stated that she has not gone to the house of the purchasers till date. She stated that she can state about the 'Pattanama' only after seeing the same. PW1

further stated that she does not know that when was the allotment made. She stated that allotment was made about 20 to 25 years ago.

21 PW2, Mukhtiar Chand, filed his affidavit in his evidence, wherein he stated that the suit land was allotted to Sant Ram, defendant No.1, being a landless person, and that as of today, on the spot, it is the plaintiff and her husband who are in possession of the suit property. In his cross-examination, he stated that he does not know for how much period the plaintiff resided with Babu Ram.

22 PW3 Milkhi Ram, the then Patwari, Land Records, brought the relevant record and stated that as per the record, letter, Ext. PW3/A is correct.

23 PW4, Sukh Chain, wrongly mentioned as PW3, who was the then Secretary of the Gram Panchayat, Amb, stated in his deposition that he had brought the register from 31.12.1977 to 30.11.1984. He stated that as per Sr. No. 278, Sant Ram has been shown to be the head of the family along with Rajjo Devi, wife of Nathu Ram, Parmeshwari Devi, wife of Sant Ram, Pooran, Totu, Saroj, sons and daughters of Sant Ram.

24 DW1, Sukh Chain Singh, deposed that he has brought Pariwar Register and as per page No. 29 thereof,

house No. 506, apart from Babu Ram, names of Parmeshwari Devi, Shrawan Lal, and Saroj Kumar have been entered. The name of Babu Ram has been entered as the head of the family. He stated that his register is with effect from 1998 till the date he made the statement before the court. In his cross-examination, he stated that Babu Ram has expired and, now Parmeshwari Devi is being shown as the head of the family.

25 DW2, Puran Chand, wrongly mentioned as DW1, tendered in evidence his affidavit, wherein all the averments as made in the written statement have been reiterated. In the affidavit, he stated that Sant Ram, defendant No.1 is his father and he is the general power of attorney of his father. As per this witness, his father is the owner in possession of the suit land. He stated that the plaintiff was the wife of Sant Ram, who about 33 to 34 years ago left the company of Sant Ram without any rhyme or reason. Thereafter, she started residing along with Babu Ram under the same roof. He further stated that for the last 33-34 years, he has not come to the house of defendant No.1 till date. The plaintiff has filed the suit in order to grab the suit land from defendant No.1. As per this witness, the plaintiff has got no concern with the

suit land. In cross-examination, the plaintiff could not extract anything favorable from this witness.

26 Prakash Chand, wrongly mentioned as DW2, entered into the witness box as DW3 and filed his affidavit, wherein, he also stated on the same lines on the basis of the defence as was taken in the written statement. As per this witness, the plaintiff was residing with Babu Ram for the last 33-34 years as his wife. During life time of Babu Ram, Parmeshwari Devi never came to the house of Sant Ram. He stated that he has seen Babu Ram and Parmeshwari to be residing together under the same roof during this period.

27 DW4 Manohar Singh (wrongly mentioned as DW3) has also stated that Parmeshwari Devi got married to Sant Ram, however, she is residing for the last 33-34 years in the house of Babu Ram as his wife.

28 DW5 Kamaal Deen, wrongly mentioned as DW3, stated that he is the general power of attorney of defendant Nos. 2 and 3, namely, Naseeb Bibi and Janat Bibi. As per this witness, Sant Ram defendant No.1 had sold the suit land measuring 0-37-81 to Naseeb Bibi and Janat Bibi for a sum of Rs. 2 lakhs. He stated that after purchasing the same, Naseeb Bibi and Janat Bibi are in possession of the suit land. He stated that defendant Nos. 2 and 3 are owners of the suit

land and the plaintiff has got no right, title, or interest over the same.

29 Perusal of copy of jamabandi Ext. P1 for the year 1996-97 would go to show defendant No.1 to be the exclusive owner in possession of the suit land comprised in khasra Nos. 938, 939, 949, 950, 951, 952, 955. The presumption of truth is attached to Ext. P1. The photocopy of the jamabandi Ext. PW1/D is the same and similar as Ext. P1.

30 The plaintiff has placed on record copy of the notification, dated 05.03.1988, as issued by the State of Himachal Pradesh, Ext.PW3/A, whereby after the allotment of the land by the State government, there was an embargo on the alienation of the said land for a period of 20 years or during the lifetime of the wife. The copy of the sale deed has been placed on record as Ext. DW1/B, whereby, on the basis of the GPA, Puran Chand, son of Sant Ram, had sold the suit land to defendant Nos. 2 and 3.

31 Primarily, the case as projected by the plaintiff, is that defendant No.1, husband of plaintiff, was allotted land being a landless person, and as per the notification as issued by the State of Himachal Pradesh in the year 1988, after the allotment of the suit land, on the basis of the prohibition, he could not have alienated the same within the stipulated

period of 20 years. The plaintiff has tried to make out a case that since the suit land has been sold by defendant No.1 in favour of defendant Nos. 2 and 3 against the spirit of the scheme, therefore, on that account, the plaintiff be declared to be joint owner in possession of the suit property, and the sale deed which has been executed by defendant No.1 in favour of defendant Nos. 2 and 3 be declared as null and void.

32 Perusal of the entire record does not show and even the learned counsel for the appellant could not answer the specific query of the Court that what is the date of the allotment of the suit land in favour of defendant No.1. The said date was very crucial for the determination of the adjudication of the case in hand in case it has to be inferred that there is any kind of violation on the part of defendant No.1.

33 Save and except the bald statement of the parties, there is no documentary evidence available on record which may show the exact date of allotment of the suit land in favour of defendant No.1. Neither copy of allotment has been placed on record, nor the revenue records including the jamabandi show the date of actual allotment of the suit land. The court has to rely upon the statement of PW1, whereby

she has stated that the allotment was made to defendant No.1 about 20 to 25 years ago and the said fact has been stated by the plaintiff in her cross-examination, which took place on 17.03.2004.

34 For the sake of argument, even if it is presumed that the allotment was made in the year 1984, even then the notification Ext. PW3/A, which has been placed on record, stipulates that there shall be bar for the sale of the allotted land for a period of 20 years or during the lifetime of the wife.

35 It is an admitted fact that prior to the issuance of this notification dated 05.03.1988, the prohibition period was of 10 years. Even if, it is presumed on the basis of the statement of plaintiff that the allotment was made in the year 1984, in that event, prohibition of 10 years will come into picture, meaning thereby that prohibition shall come to an end in the year 1994.

36 Admittedly, in the present case, the sale deed was executed by defendant No.1 in favour of defendant Nos. 2 and 3 on 29.01.2002. Therefore, on account of this material defect in the pleadings and evidence as led by the plaintiff, she has failed to establish or prove that there is any kind of violation of the prohibition as contained in the scheme stipulated by the Government of Himachal Pradesh.

37 From the perusal of the pleadings, it would be noticed that the only case of the plaintiff is that of violation of the scheme, and as per the case as set up by her, the suit land could not have been alienated within the stipulated period of 20 years from the date of allotment. As observed above, in the absence of any document, which may demonstrate the accurate date of the allotment, the learned courts below have rightly come to the conclusion that the plaintiff has not been able to make out the case for the grant of decree of declaration and for declaring the sale deed, being null and void.

38 It has come on record that the plaintiff was residing with Babu Ram for the last more than 33 years, and out of the union of Babu Ram and the plaintiff, two sons were born, and this fact has been admitted by the plaintiff in her cross-examination. The said fact has also been corroborated by DW2 and DW3. The statement of DW1 Sukhchain Singh, the official witness, who was working as a Secretary Gram Panchayat Amb at the relevant time, would go to show that in the pariwar register, Babu Ram has been shown to be the head of the family, and after his death Parmeshwari Devi is being shown as head of the family. It has been consistently stated by all the witnesses that Parmeshwari Devi plaintiff

was residing for the last more than 33-34 years in the house of Babu Ram. The learned courts below have concurrently come to the conclusion that neither she can be termed to be the owner nor in possession of the suit property, therefore, she cannot be declared as the joint owner in possession of the suit land.

39 Defendant Nos. 2 and 3 have been able to make out the case that they are the purchasers of the suit land, and they have been able to establish that by virtue of legal and valid sale deed, they became the owners of the suit land in a legal manner. The plaintiff could not establish any infirmity or illegality in the said sale deed, therefore, the findings rendered by the learned Courts below, in the considered opinion of the court, are sustainable in the eyes of law.

40 As far as substantial question of law No.(b) is concerned, from the perusal of the issues which were framed by the learned trial court, it would be seen that neither this issue was raised by either of the parties, nor it was put to trial. Therefore, at this stage, the appellants cannot be permitted to raise such plea that too at the stage of regular second appeal. The case at hand before this court is whether the sale deed, which has been executed by defendant No.1 in favour of defendant Nos. 2 and 3, is in violation of the

scheme as formulated by the State of Himachal Pradesh, whereby after the grant of land to the landless person, no alienation can take place for 20 years. As plaintiff has miserably failed to establish the said case, therefore, the aforesaid question of law which has been raised by the present appellant, that too in the absence of any issue before the learned courts below, is answered accordingly, along with substantial question of law No. (a).

41 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.

42 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."

43 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."

44 The findings as returned by the learned courts below are purely findings of fact, and this court is not inclined to interfere with the same. This Court is of the considered opinion that the learned Courts below have rightly appreciated the point in controversy after considering the oral as well as documentary evidence placed on record. Thus, there is no illegality or perversity in the impugned judgments and decrees, as concurrently passed by the learned Courts below, and the same are upheld.

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

46 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.

31st October, 2026 **(Romesh Verma)**
(pankaj) **Judge**