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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA Nos. 364 and 365 of 2007
Reserved on: 12.10.2026
Date of Decision: 05.11.2026

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1. RSA No. 364 of 2007

Diwan Singh (since deceased) through LRs Satish Kumar (deceased) through LRs Ms.Rekha Kheora and Ors.

.....Appellants

Versus

Dashodha (since deceased) through LRs ...Respondents

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2. RSA No. 365 of 2007

Diwan Singh (since deceased) through LRs Satish Kumar (deceased) through LRs Ms.Rekha Kheora and Ors.

...Appellants

Versus

Dashodha (since deceased) through LRs ...Respondents

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] ***No***

For the Appellants	:	Mr Bhupinder Gupta, Senior Advocate, with Mr Harshit Sharma, Advocate, in both the appeals.
For Respondents No.1(a), 4 to 8 and 10	:	Mr Mohinder Verma, Advocate, in both the appeals.

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

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For the remaining respondents : None

Name of respondent No.9 stands deleted vide order dated 25.03.2009.

Rakesh Kainthla, Judge

The present appeals are directed against the judgment and decree dated 16.05.2007 passed by learned District Judge (Forest), Shimla (learned Appellate Court) vide which the judgment and decree dated 20.11.2001 passed by learned Sub Judge First Class, Theog, District Shimla (learned Trial Court) were upheld. *(The parties hereinafter be referred to in the same manner as they were arrayed before the Learned Trial Court for convenience.)*

2. Briefly stated, the facts giving rise to the present appeals are that the plaintiffs filed a civil suit before the learned Trial Court for seeking a declaration that they are the owners in possession of the suit land mentioned in para 1 of the plaint and that the revenue entries are wrong and illegal. A consequential relief of permanent prohibitory injunction for restraining the defendants from interfering with the plaintiff's possession of the suit land was also prayed. It was asserted that the suit land had fallen into the share of Het Ram in a private partition effected

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amongst the co-owners. Het Ram was issueless. Plaintiffs used to maintain him and help him in cultivating the suit land. Het Ram gave the suit land to the plaintiffs in the year 1965. The plaintiffs used to give some share of the produce to Het Ram. Het Ram had also given a house located in village Kamnya to the plaintiffs. Plaintiff No. 1 resides in the house, and he had repaired it. The plaintiffs are the tenants over the suit land. However, the revenue entries do not reflect their possession. The plaintiffs have become the owners in the alternative by way of adverse possession. The defendants have no right to interfere with the suit land, but they threatened to interfere with the suit land and oust the plaintiff from the suit land based on the revenue entries. Hence, the suit was filed for seeking the relief mentioned above.

3. The suit was opposed by filing a written statement denying the contents of the plaint. It was asserted that Het Ram was in possession of the land in the house as per the family arrangement. He had 4 daughters. He remained in possession of the land owned by him during his lifetime. Defendant No. 1 came in possession of the suit land after the death of Het Ram. Plaintiff No. 1 volunteered to help Defendant No. 1 to look after her property and help her in cultivating the land. Defendant No. 1 gave Khasra No. 460, 461 and 544 measuring 5 Bigha, 2 Biswa to Diwan Singh till he

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rendered services to Defendant No. 1. She also permitted Diwan Singh to reside in the house as a licensee. The defendant no. 1 orally terminated the license of the plaintiff no. 1 and asked him to vacate the suit land and the house. He filed a false suit to harass the defendant No. 1. The plaintiffs have no right, title or interest over the suit land. Therefore, it was prayed that the suit be dismissed.

4. A counterclaim was also filed seeking the possession of Khasra No. 460, 461 and 544 from Plaintiff No. 1, Diwan Singh, by saying that he was a licensee and his license has been terminated by Defendant No. 1. He has failed to deliver the possession after the termination of the license. Hence, it was prayed that the plaintiff no. 1 be directed to hand over the possession of Khasra no. 460, 461 and 544 and the house to Defendant No. 1.

5. A replication denying the contents of the written statement and affirming those of the plaint was filed.

6. Written statement denying the contents of the counter claim was also filed. It was asserted that no license was ever created by defendant no.1 in favour of the plaintiff no.1. The plaintiffs are in possession as tenants, and they have become the owners in the alternative. Hence, it was prayed that the counter claim be dismissed.

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7. Rejoinder denying the contents of the written statement to the counter claim and affirming those of the counter claim was filed.

8. The learned Trial Court framed the following issues on 19.01.1993: -

(i) Whether the suit land has fallen in the share of Het Ram in a private partition as alleged? OPP

(ii) Whether the plaintiffs are tenants over the suit land as alleged? OPP

(iii) Whether the plaintiffs have become owners in possession of suit land by virtue of adverse possession, in the alternative, as alleged? OPP

(iv) Whether plaintiff No.1 is a licensee over part of the suit property as alleged? OPD

(v) Whether the defendant No.1 is entitled for mandtory injunction, as prayed for? OPD

(vi) Whether the suit is properly valued? OPD.

(vi-A) If Issues No.2 and 3 are answered in the affirmative, whether the plaintiffs are entitled to the relief of permanent prohibitory injunction as alleged?OPP

(vii) Relief.

9. The parties were called upon to produce the evidence, and the plaintiff No. 1, Diwan Singh, examined himself (PW1), Ajit Singh (PW2), Puran Singh (PW3) and Ram Krishan (PW4). Defendant No.1 Dashoda Devi examined herself (DW1), Pritam Singh (DW2), Sita Ram (DW3), and Sher Singh (DW4). Plaintiff examined Sita Ram (PW5) in rebuttal.

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10. Learned Trial Court held that there was no evidence of the partition between co-sharers. The plaintiffs' version that Het Ram had put them in possession of the suit land was not proved on record. There was a discrepancy regarding the share paid to Het Ram. Dashoda Devi had filed a civil suit no. 109/1 of 1978 in which plaintiff no. 1 Diwan Singh had appeared as a witness. No claim was projected by the plaintiffs in that suit, which falsifies the plea taken by them in the present proceeding regarding the tenancy. The plaintiffs relied upon the documents stated to have been executed by defendant no.1, Dashoda Devi, Vidya Devi and Begi Devi. However, the documents were produced belatedly, and Dashoda Devi was not confronted with those documents when she was in the witness box. Hence, no reliance can be placed upon the documents. The plea taken by the defendant that plaintiff no. 1 was put in possession as a licensee was believable. Hence, the learned Trial Court answered issue Nos. 4 and 6 in the affirmative, issue No. 5 partly in the affirmative, the rest of the issues in the negative, dismissed the suit and partly decreed the counter-claim.

11. Being aggrieved by the judgment and decree passed by the learned Trial Court, the plaintiffs filed an appeal which was decided by the learned District Judge (Forest), Shimla (learned Appellate Court). The learned Appellate Court concurred with the

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findings recorded by the learned Trial Court that the plaintiffs had failed to prove their tenancy. Puran Singh (PW3) stated that he had seen the possession of the plaintiff over the suit land for 16-17 years, which suggests that the plaintiffs were put in possession in the year 1976-77 after the death of Het Ram, which had taken place in the year 1975. The documents containing the admission of the Dashoda Devi were produced belatedly, and these were not put to her in her cross-examination. Hence, no reliance could be placed upon them. The plea taken by the plaintiffs that they had become the owners of the suit land by way of adverse possession was also not proved. The plea of the defendant no. 1 that she was the owner and had put the plaintiff no.1 in possession as a licensee was probable. There was no infirmity in the judgment and decree passed by learned Trial Court. Hence, the appeal was dismissed.

12. Being aggrieved by the judgment and decree passed by learned Appellate Court, the plaintiffs have filed the present appeals which were admitted on the following substantial question of law on 21.05.2008: -

(i) When (Ext.DW4/A) and (Ext.DW4/B) were duly proved in evidence, have not both the Courts below discarded the material pieces of evidence, which was relied upon in support of the claim of tenancy of plaintiffs-appellants merely on the ground that the same were produced at a belated stage? Is not the approach taken

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by both the Courts below essentially wrong, erroneous and perverse in discarding such material evidence which has materially affected the decision regarding the status of plaintiffs-appellants over the suit land?

(ii) Whether both the Courts below have acted in a highly erroneous, illegal, arbitrary and perverse manner in ignoring the admission made by Smt. Dashodha in her statement made in Civil Suit No.109/1 of 1978 Ext.PB regarding the status of plaintiffs-appellants over the suit land and delivery of possession of suit property to them by ignoring the relevant provisions of the Evidence Act?

13. I have heard Mr Bhupinder Gupta, learned Senior Advocate, assisted by Mr Harshit Sharma, learned counsel for the appellants/plaintiff, in both the appeals and Mr Mohinder Verma, learned counsel for respondents No.1(a) to 10, in both the appeals.

14. Mr Bhupinder Gupta, learned Senior Advocate for the appellants, submitted that the defendant No. 1 had admitted in the previous suit filed by her that the plaintiffs were in possession. She had also executed an agreement acknowledging that the plaintiffs were the tenants of the suit land. The learned Courts below discarded the documents on the ground that these were not put to the defendant No. 1 in her cross-examination. However, there is no requirement to put the admission to a party in the cross-examination because the admission is substantive evidence and the provision of Section 145 of the Indian Evidence Act does not apply to it. He relied upon the

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judgment of this Court in ***Rekha Karol and Ors vs. Lachhmi Devi and Ors 2026 NCHHC 23642***, in support of his submissions.

15. Mr Mohinder Verma, learned counsel for the respondents, submitted that the documents were not filed along with the plaint and they were put to DW4 during his examination. The documents could not have been produced during the course of evidence and learned Courts below had rightly rejected the documents. There is no infirmity in the judgment and decree passed by learned Courts below. Hence, he prayed that the present appeal be dismissed.

16. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

Scope of jurisdiction under Section 100 of CPC

17. The scope of the jurisdiction vested in the High Court under Section 100 of the CPC was explained by this Court in ***Maro (dead) through LR Paramjeet Kaur Vs. Khillo 2012 (2) Shim. L.C. 869***, wherein it was observed:

> 13. The Apex Court in ***Hari Singh v. Kanhaiya Lal (1999) 7 SCC 288*** has held that "the jurisdiction of courts in first appeals, second appeals or revisions is all to the extent conferred by the legislature. No litigant possesses any natural or inherent right to appeal against any order, unless a statute confers it, and it is to the extent it is conferred. Thus, the area of challenge is also hedged by the legislature. Hence, the challenge to the impugned order has to be confined within such a limitation."

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14. The word 'substantial' as qualifying a question of law has been clarified by the Apex Court in ***Gurdev Kaur v. Kaki, (2007) 1 SCC 546*** to mean "having substance, essential, real, of sound worth, important or considerable." It is further held that "even if the first appellate Court commits an error in recording a finding of fact, that itself will not be a ground. In other words, a search for truth has to be reconciled with the doctrine of finality. An unqualified right of first appeal may be necessary for the satisfaction of the defeated litigant, but a wide right of second appeal is more in the nature of a luxury. To interfere, because they seem to feel that a decree following upon a gross misappreciation of evidence involves injustice, no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact."

15. In ***Municipal Committee Hoshiarpur v. Punjab State Electricity Board, (2010) 13 SCC 216***, the Apex Court has further held that "it is only in very exceptional cases and on extreme perversity, power to scrutiny can only be had in very exceptional circumstances and upon proper circumspection."

16. Further, in ***Ramanuja Naidu v. V. Kanniah Naidu, (1996) 3 SCC 392***, the Apex Court has held that "what is administered in courts is justice according to law and considerations of fair play and equity, however important they may be, must yield to clear and express provisions of the law. If in reaching its decisions in second appeals, the High Court contravenes the express provisions of Section 100, it would inevitably introduce in such decisions an element of disconcerting unpredictability which is usually associated with gambling; and that is a reproach which judicial process must constantly and scrupulously endeavour to avoid."

17. However, in ***Kulwant Kaur v. Gurdial Singh Mann (Dead) by LRs (2001) 4 SCC 262***, the Apex Court held that "technicality alone by itself ought not to permit the High Court to decide the issue since a justice-oriented approach is the call of the day presently."

18. But then, subsequently in ***Manjunath Anandappa URF Shivappa Hansi v. Tammanasa, (2003) 10 SCC 390***, it clarified that "an appellate power interferes not when the order

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appealed is not right but only when it is clearly wrong. The difference is real, though fine."

19. The ratio of law laid down by the Apex Court in ***Chunilal V. Mehta & Sons Ltd. v. Century Spinning and Manufacturing Co. Ltd., AIR 1962 SC 1314***, even post amendment of the provisions of Section 100 CPC, stands reiterated by the Apex Court and in its various judicial pronouncements, it is held that it would be open for the High Court to interfere with the findings of facts recorded by the Court below only where findings of facts are vitiated by;

(i) non-consideration of relevant evidence, (***Jagdish Singh v. Nathu Singh, (1992) 1 SCC 647*** & ***Ram Das v. Gandia Bai, (1997) 1 SCC 74***);

(ii) The conclusion is based on no evidence (***Ramanuja Naidu*** (supra), ***Neelkantan v. Mallika Begum, (2002) 2 SCC 440)***.

(iii) Conclusions are biased, and evidence is not sufficient to support the same; (***Ramanuja Naidu*** (supra));

(iv) material evidence having a direct impact on the decision of the case was ignored; (***Ram Das*** (supra) & ***Bharatha Matha v. R. Vijaya Renganathan, (2010) 11 SCC 483***);

(v) misread evidence which led to miscarriage of justice, (***Rohini Prasad v. Kasturchand (2000) 3 SCC 668***);

(vi) Rejected the witness accepted by the trial Court, (***Kondiba Dagadu Kadam v. Savitribai Sopan Gujar, (1999) 3 SCC 722***);

(vii) Findings are erroneous, being contrary to the mandatory provisions of law applicable/settled by the Apex Court (***Kondiba Dagadu Kadam*** (supra));

(viii) assumed jurisdiction not vested in the Court (***Kondiba Dagadu Kadam*** (supra));

(ix) not appreciating oral and documentary evidence properly, which materially prejudices the case of the

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parties, rendering the findings to be perverse (***Kulwant Kaur v. Gurdial Singh Mann, (2001) 4 SCC 262***, ***Neelkantan*** (supra), ***Ramlal v. Phagua (2006) 1 SCC 168*** & ***Municipal Committee Hoshiarpur*** (supra));

(x) interpretation of documents which goes to the root of the title of a party (***Dinesh Kumar v. Yusuf Ali, (2010) 12 SCC 740***).

(xi) where the courts have wrongly cast the burden of proof (***Narendra Gopal Vidyarthi v. Rajat Vidyarthi, (2009) 3 SCC 287***);

20. The Apex Court has held that the High Court cannot set aside findings of the first Appellate Court in the following circumstances;

(i) No point of law pleaded before the Courts below (***V. Pechimuthu v. Gowrammal, (2001) 7 SCC 617***, ***Hero Vinoth (Minor) v. Seshammal, (2006) 5 SCC 545***);

(ii) to arrive at a different conclusion on reappraisal of evidence, to adjudge the adequacy or sufficiency of evidence to sustain the conclusion of facts (***Ramanuja Naidu*** (supra)),

(iii) mere equitable consideration, (***Kondiba Dagadu Kadam*** (supra));

(iv) the first Appellate Court did not advert to all the reasons given by the trial Court, (***Arumugham (dead) by LRs v. Sundarambal (1999) 4 SCC 350***);

(v) where two inferences are possible, the one drawn by the lower Appellate Court is binding on the High Court (***Kondiba Dagadu Kadam*** (supra), ***Karnataka Board of Wakf v. Anjuman-E-Esmail Madris-Un-Niswan, (1999) 6 SCC 343*** and ***Hero Vinoth*** (supra));

(vi) Another view is possible on re-appreciation of the same evidence (***Navaneethammal v. Arjuna Chetty (1996) 6 SCC 166***).

18. This Court held in ***Geeta Bhawan Vs. Balbir Singh & Ors. 2018 (2) Him. L.R. 1004*** that the Court can interfere with a finding

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of fact if relevant admissible evidence was not taken into consideration or inadmissible evidence was considered. It was observed:

> **29.** Hon'ble Apex Court in ***D.R. Rathna Murthy v. Ramappa, (2011) 1 SCC 15***8, has specifically held that the High Court can interfere with the findings of fact even in the second appeal, provided the findings recorded by Courts below are found to be perverse. It has further been held in the case *supra* that there is no absolute bar on the reappreciation of evidence in those proceedings; however, such a course is permissible in exceptional circumstances. The Hon'ble Apex Court has held as under:—
>
> > "*9. Undoubtedly, the High Court can interfere with the findings of fact even in the Second Appeal, provided the findings recorded by the courts below are found to be perverse, i.e. not being based on the evidence or contrary to the evidence on record or reasoning is based on surmises and misreading of the evidence on record or where the core issue is not decided. There is no absolute bar on the re-appreciation of evidence in those proceedings; however, such a course is permissible in exceptional circumstances.* (Vide ***Rajappa Hanamantha Ranoji v. Mahadev Channabasappa, (2000) 6 SCC 120; Hafazat Hussain v. Abdul Majeed, (2001) 7 SCC 189*** and ***Bharatha Matha v. R. Vijaya Renganathan, (2010) 11 SCC 483.)***" (p. 162)
>
> **30.** Hon'ble Apex Court in ***Santosh Hazari v. Purushottam Tiwari (Deceased) By LRs., (2001) 3 SCC 179***, has held that the appellate Court ought not to interfere with the findings of the trial Judge on a question of fact unless the latter has overlooked some peculiar feature connected with the evidence of a witness or such evidence, on balance, is sufficiently improbable so as to invite displacement by the appellate Court.
>
> **31.** Careful reading of aforesaid law laid down by Hon'ble Apex Court clearly suggests that there is no blanket bar for

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High Courts to upset the concurrent findings of Courts below, especially when it emerges from the record that (i) the Courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. Hon'ble Apex Court in ***Sebastiao Luis Fernandes (Dead) through LRs v. K.V.P. Shastri (Dead) through LRs, (2013) 15 SCC 161***, has held as under:

> "35. The learned counsel for the defendants relied on the judgment of this Court in ***Hero Vinoth v. Seshammal, (2006) 5 SCC 545***, wherein the principles relating to Section 100 of the CPC were summarised in para 24, which is extracted below:(SCC pp. 555-56)
>
> > *"24. The principles relating to Section 100 CPC relevant for this case may be summarised thus:*
> >
> > *(i) An inference of fact from the recital or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. The construction of a document involving the application of any principle of law is also a question of law. Therefore, when there is a misconstruction of a document or a wrong application of a principle of law in construing a document, it gives rise to a question of law. (ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, the answer to which affects the rights of parties to the suit) will be a substantial question of law if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such*

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> *legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question violates the settled position of law. (iii) The general rule is that the High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case where the evidence, taken as a whole, is not reasonably capable of supporting the finding. We have to place reliance on the aforementioned case to hold that the High Court has framed substantial questions of law as per Section 100 of the CPC, and there is no error in the judgment of the High Court in this regard, and therefore, there is no need for this Court to interfere with the same." (pp. 174-175)*

> *32. It is quite evident from the aforesaid exposition of law that even concurrent findings of fact recorded by Courts below can be interfered with/upset by the High Courts, while exercising power under Section 100 CPC, if it is convinced that findings recorded by Courts below are not based upon any evidence and the same are perverse. However, in the case at hand, this Court, having perused the entire record, finds no perversity in the impugned judgments and decrees passed by both the Courts below, and as such, there is no scope left for this Court to interfere with the concurrent findings of fact and law recorded by the Courts below.*

19. Therefore, it is apparent that the Court can interfere with the pure finding of facts recorded by the learned First Appellate Court only if there is a perversity. The term perversity

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was explained by this Court in ***Gabion Technologies India (P) Ltd.*** (supra) as under:

> **7.** What is 'perverse' was considered by the Hon'ble Supreme Court in a detailed judgment in ***Arulvelu v. State Represented by the Public Prosecutor (2009) 10 SCC 206***, wherein it was held as under: —
>
> > "26. In ***M.S. Narayanagouda v. Girijamma, AIR 1977 Kar. 58***, the Court observed that any order made in conscious violation of pleading and law is a perverse order. In ***Moffett v. Gough (1878) 1 LR 1r 331***, the Court observed that a perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In Godfrey v. Godfrey 106 NW 814, the Court defined 'perverse' as turned the wrong way, not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.
>
> 27. The expression "perverse" has been defined by various dictionaries in the following manner:
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> 1. Oxford Advanced Learner's Dictionary of Current English Sixth Edition
>
>   PERVERSE: - Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable.
>
> 2. Longman Dictionary of Contemporary English - International Edition
>
>   PERVERSE: Deliberately departing from what is normal and reasonable.
>
> 3. The New Oxford Dictionary of English - 1998 Edition
>
>   PERVERSE: Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.
>
> 4. New Webster's Dictionary of the English Language (Deluxe Encyclopedic Edition)

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PERVERSE: Purposely deviating from accepted or expected behaviour or opinion; wicked or wayward; stubborn; cross or petulant.

5. Stroud's Judicial Dictionary of Words & Phrases, Fourth Edition

PERVERSE: A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

*28. In **Shailendra Pratap v. State of U.P. (2003) 1 SCC 761**, the Court observed thus : (SCC p.766, para 8*

"8...We are of the opinion that the trial court was quite justified in acquitting the appellants of the charges, as the view taken by it was a reasonable one and the order of acquittal cannot be said to be perverse. It is well settled that an appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. In the present case, the High Court has committed an error in interfering with the order of acquittal of the appellants recorded by the trial court, as the same did not suffer from the vice of perversity."

*29. In **Kuldeep Singh v. The Commissioner of Police (1999) 2 SCC 10**, the Court, while dealing with the scope of Articles 32 and 226 of the Constitution, observed as under : (SCC p.14, paras 9-10)*

"9. Normally, the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry, but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable, and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which

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> could be relied upon, however compendious it may be, the conclusions would not be treated as perverse, and the findings would not be interfered with."

30. The meaning of 'perverse' has been examined in ***H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal v. Gopi Nath & Sons 1992 Supp (2) SCC 312****, this Court observed as under : (SCC pp. 316-17, para 7)*

> "7. In the present case, the stage at which and the points on which the challenge to the assessment in judicial review were raised and entertained were not appropriate. In our opinion, the High Court was in error in constituting itself into a court of appeal against the assessment. While it was open to the respondent to have raised and for the High Court to have considered whether the denial of relief under the proviso to Section 39(5) was proper or not, it was not open to the High Court to re-appreciate the primary or perceptive facts which were otherwise within the domain of the fact-finding authority under the statute. The question whether the transactions were or were not sales exigible to sales tax constituted an exercise in recording secondary or inferential facts based on primary facts found by the statutory authorities. But what was assailed in review was, in substance, the correctness - as distinguished from the legal permissibility - of the primary or perceptive facts themselves. It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality, incurring the blame of being perverse, then the finding is rendered infirm in law."

8. What is 'perverse' has further been considered by this Court in ***RSA No. 436 of 2000***, titled '***Rubi Sood v. Major (Retd.) Vijay Kumar Sud, decided on 28.05.2015*** in the following manner: —

> "25..... A finding of fact recorded by the learned Courts below can only be said to be perverse, which has been

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> arrived at without consideration of material evidence or such finding is based on no evidence or misreading of evidence or is grossly erroneous that, if allowed to stand, it would result in miscarriage of justice, is open to correction, because it is not treated as a finding according to law.
>
> 26. If a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or even the finding so outrageously defies logic as to suffer from the vice of irrationality, incurring the blame of being perverse, then the finding is rendered infirm in the eyes of the law.
>
> 27. If the findings of the Court are based on no evidence or evidence which is thoroughly unreliable or evidence that suffers from the vice of procedural irregularity or the findings are such that no reasonable person would have arrived at those findings, then the findings may be said to be perverse.
>
> 28. Further, if the findings are either ipse dixit of the Court or based on conjectures and surmises, the judgment suffers from the additional infirmity of non-application of mind and thus, stands vitiated."

9. What is 'perversity' recently came up for consideration before the Hon'ble Supreme Court in ***Damodar Lal v. Sohan Devi (2016) 3 SCC 78***, wherein it was held as under:—

> "8. Perversity" has been the subject matter of umpteen number of decisions of this Court. It has also been settled by several decisions of this Court that the first appellate court, under Section 96 of the Civil Procedure Code, 1908, is the last court of facts unless the findings are based on evidence or are perverse.

9. In ***Krishnan v. Backiam (2007) 12 SCC 190****, it has been held at paragraph 11 that : (SCC pp. 192-93)*

> "11. It may be mentioned that the first appellate court under Section 96 CPC is the last court of facts. The High Court, in a second appeal under Section 100 CPC,

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> cannot interfere with the findings of fact recorded by the first appellate court under Section 96 CPC. No doubt the findings of fact of the first appellate court can be challenged in a second appeal on the ground that the said findings are based on no evidence or are perverse, but even in that case, a question of law has to be formulated and framed by the High Court to that effect."

10. In ***Gurvachan Kaur v. Salikram (2010) 15 SCC 530****, at para 10, this principle has been reiterated: (SCC p. 532)*

> "10. It is settled law that in the exercise of power under Section 100 of the Code of Civil Procedure, the High Court cannot interfere with the finding of fact recorded by the first appellate court, which is the final court of fact, unless the same is found to be perverse. This being the position, it must be held that the High Court was not justified in reversing the finding of fact recorded by the first appellate court on the issues of the existence of a landlord-tenant relationship between the plaintiff and the defendant and the default committed by the latter in payment of rent."

20. It has been submitted in the present case that the learned Courts below erred in excluding the relevant evidence, which amounts to perversity. Hence, this Court has to determine whether the learned Courts below had excluded the relevant evidence or not.

Substantial Question of Law No. 1:

21. Sher Singh (DW4) was examined on 22.09.1994. He admitted in his cross-examination that he had brought the register of his documents. A prayer was made to put the documents to him in his cross-examination, which was allowed, and his further

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cross-examination was deferred. He was examined on 07.12.1994. He admitted that he had executed the document (Ext.DW4/A) at the instance of Dashodha Devi, which was read over and explained to her, and she put her signature on it. Similarly, he had written the document (Ext.DW4/B) at the instance of Vidya Devi and Begi Devi, which was acknowledged by them to be correct, and they had put their signatures in the presence of the witnesses. Therefore, it is apparent that the documents were put to the witness of the defendant during the cross-examination. Order XIII Rule 1 (3) (a) of the Code of Civil Procedure provides that the provisions of Order XIII Rule 1 requiring that the documents are to be produced before the settlement of issues do not apply to the documents produced for the cross-examination of the witness of the other party. Similarly, Order VII Rule 14(4) provides that the provision of this rule does not apply to the document produced for the cross-examination of the defendant's witnesses[2] or handed over to the witness to refresh his memory. Therefore, it is apparent that the parties are required to produce the documents along with their pleadings or before the settlement of issues. However, this provision does not apply to the documents which are produced during the cross-examination of the witnesses. The documents

[2] The word plaintiff's in the rule is ordered by read as defendant's by the Hon'ble Supreme Court of India in *Salem Advocate Bar Association, Tamil Nadu v. Union of India,* AIR 2005 SC 3353

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were produced in the present case during the cross-examination of Sher Singh and the prohibition contained in Order VII or Order XIII of the CPC does not apply to these documents.

22. Learned Courts below also held that the documents were not put to the defendant no. 1 during her cross-examination and the documents cannot be read in evidence. This finding cannot be sustained. It was laid down by the Hon'ble Supreme Court in ***Bishwanath Prasad v. Dwarka Prasad, (1974) 1 SCC 78: 1973 SCC OnLine SC 322*** that a statement made by a party is admissible, irrespective of the fact whether the party appeared in the witness box or the admission was put to him in the cross-examination. It was observed at page 81:

> **8.** There is no merit even in the contention that, because these three statements — Exs. G, G-2 and H had not been put to the first plaintiff when he was in the witness box or to the eighth defendant, although he had discreetly kept away from giving evidence; they cannot be used against him. Counsel drew our attention to Section 145 of the Indian Evidence Act. There is a cardinal distinction between a party who is the author of a prior statement and a witness who is examined and is sought to be discredited by use of his prior statement. In the former case, an admission by a party is substantive evidence if it fulfils the requirements of Section 21 of the Evidence Act; in the latter case, a prior statement is used to discredit the credibility of the witness and does not become substantive evidence. In the former, there is no requirement of the statement containing the admission having to be put to the party because it is evidence *proprio vigore*; in the latter case, the Court cannot be invited to disbelieve a witness on the strength of a prior contradictory

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statement unless it has been put to him, as required by Section 145 of the Evidence Act. This distinction has been clearly brought out in the ruling in the ***Bharat Singh case. [AIR 1966 SC 405: (1966) 1 SCR 606, 615-16: (1966) 2 SCJ 53]*** This Court disposed of a similar argument with the following observations:

> "Admissions are substantive evidence by themselves, in view of Sections 17 and 21 of the Indian Evidence Act, though they are not conclusive proof of the matters admitted. *We are of the opinion that the admissions duly proved are admissible evidence irrespective of whether the party making them appeared in the witness box or not, and whether that party, when appearing as a witness, was confronted with those statements in case it made a statement contrary to those admissions.* The purpose of contradicting the witness under S. 145 of the Evidence Act is very much different from the purpose of proving the admission. Admission is substantive evidence of the fact admitted, while a previous statement used to contradict a witness does not become substantive evidence and merely serves the purpose of throwing doubt on the veracity of the witness. What weight is to be attached to an admission made by a party is a matter different from its use as admissible evidence." (Emphasis supplied)

23. This position was reiterated in ***Union of India v. Moksh Builders and Financiers Ltd.*, *(1977) 1 SCC 60: 1976 SCC OnLine SC 377***, wherein it was observed at page 67:

> **21....** There is, however, no force in the other argument that they are not admissible in evidence against Defendant 3, as he was not confronted with them in the trial court, and they were not adverse to the interest of their maker at the time when they were made. It has been held by this Court in ***Bharat Singh v. Bhagirath [AIR 1966 SC 405: (1966) 1 SCR 606***] that an admission is substantive evidence of the fact admitted, and that admissions duly proved are

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> "admissible evidence irrespective of whether the party making them appeared in the witness box or not and whether that party, when appearing as witness, was confronted with those statements in case it made a statement contrary to those admissions."

In taking this view, this Court has noticed the decision in ***Ajodhya Prasad Bhargava v. Bhawani Shanker Bhargava [AIR 1957 All 1: ILR (1956) 2 All 399]*** also. The point has been considered and answered as follows in ***Wigmore on Evidence***, Vol. IV, §1048 (at p. 3):

> "The theory of the hearsay rule is that an extra-judicial assertion is excluded unless there has been sufficient opportunity to test the grounds of assertion and the credit of the witness, by cross-examination by the party against whom it is offered (post, §1362); e.g. if Jones had said out of court 'The party-opponent Smith borrowed this fifty dollars', Smith is entitled to an opportunity to cross-examine Jones upon that assertion. But if it is Smith himself who said out of court, 'I borrowed this fifty dollars', certain Smith cannot complain of lack of opportunity to cross-examine himself before his assertion is admitted against him. Such a request would be absurd. Hence, the objection of the hearsay rule falls away, because the very basis of the rule is lacking, viz., the need and prudence of affording an opportunity of cross-examination."

Moreover, Defendant 3 had a full opportunity to appear and defend himself, but he did not do so, and the case proceeded against him ex parte. The plaintiff even tried to examine him as his own witness, but his appearance could not be secured in spite of the prayer for the issue of summonses and a warrant. There is therefore no force in the argument to the contrary.

22. So also, there is no force in the argument that the aforesaid admissions or statements of Defendant 3 could not be read against him, as they were not averse to his interest when made. There is no such requirement of the Evidence Act, and the argument is untenable as it unreasonably restricts the opportunity to prove the true state of affairs on

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the party's own showing and to demolish his subsequent claim as self-contradictory. This point has also been dealt with in *Wigmore on Evidence*, §1048 (at p. 4) in this way:

> "It follows that the subject of an admission is not limited to facts against the party-opponent's interest at the time of making it. No doubt the weight of credit to be given to such statements is increased when the fact stated is against the person's interest at the time, but that circumstance has no bearing upon their admissibility. On principle, it is plain that the probative reason why a party-opponent's utterance is sought to be used against him is ordinarily the reason noted above, in para 1(*b*), viz. that it exhibits an inconsistency with his present claim, thus tending to throw doubt upon it, whether he was at the time speaking apparently in his own favour or against his own interest."

The contrary view has been characterised by Wigmore as "a fallacy, in the fullest sense".

23. Another argument which has been advanced against the admissibility of the aforesaid admissions of Defendant 3 is that they could be evidence only in terms of Section 33 of the Evidence Act. That argument is also quite untenable because Section 33 deals with statements of persons who cannot be called as witnesses, and does not restrict or override the provisions relating to admissions in the Evidence Act. The High Court also committed a similar error of law in its impugned judgment. The aforesaid admissions of Defendant 3 are therefore satisfactory evidence to prove that he himself was the owner of the house, and his son, Defendant 2, was merely a "benamidar" for him.

24. This position was reiterated in ***Vathsala Manickavasagam v. N. Ganesan*, *(2013) 9 SCC 152: 2013 SCC OnLine SC 550*** wherein it was observed at page 161:

> **22.** As far as the principle to be applied in Section 17 is concerned, the section as it reads is an admission, which constitutes a substantial piece of evidence, which can be

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relied upon for proving the veracity of the facts incorporated therein. When once the admission, as noted in a statement either oral or documentary is found, then the whole onus would shift to the party who made such an admission and it will become an imperative duty on such party to explain it. In the absence of any satisfactory explanation, it will have to be presumed to be true. It is needless to state that an admission, in order to be complete and to have the value and effect referred to therein, should be clear, certain and definite, without any ambiguity, vagueness or confusion. In this context, it will be worthwhile to refer to a decision of this Court in ***Union of India v. Moksh Builders and Financiers Ltd. [(1977) 1 SCC 60: 1977 SCC (Tax) 132: AIR 1977 SC 409]*** wherein it is held as under : (SCC p. 68, para 21)

> "*21.* ... It has been held by this Court in ***Bharat Singh v. Bhagirathi [AIR 1966 SC 405: (1966) 1 SCR 606]*** that an admission is substantive evidence of the fact admitted, and that admissions duly proved are
>
> > 'admissible evidence irrespective of whether the party making them appeared in the witness box or not and whether that party when appearing as witness was confronted with those statements in case it made a statement contrary to those admissions.' (AIR p. 410, para 19)
>
> In taking this view, this Court has noticed the decision in ***Ajodhya Prasad Bhargava v. Bhawani Shanker Bhargava [AIR 1957 All 1]*** also."

25. A similar view was taken by this Court in ***Inderjit Singh v. Omkar Singh, 2010 SCC OnLine HP 3336*** and ***Rekha Karol*** (supra). Therefore, the documents could not have been rejected on the ground that they were not put to the defendant no. 1.

26. Document (Ext.DW4/A) reads that Dashoda Devi is the owner of the land in Kamnya. She and her husband, Het Ram, had handed over the land and house to Diwan Singh for cultivation.

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Diwan Singh was in possession of the land and house for about 10 years. She and her husband used to reside at Bagdi. Diwan Singh was paying half produce of rent to her, and she had no objection to the entry of the name of Diwan Singh in the revenue record.

27. The document (Ext.DW4/B) was executed by Vidya Devi (defendant No.16) and Begi Devi, who had stated that they were the co-owners of the land and the house. They had handed over the land and the house to Diwan Singh for cultivation. Diwan Singh was paying the land revenue as per the revenue documents, and the executants had no objection to entering the name of Diwan Singh in the revenue record.

28. Both these documents show that the plaintiff's version that Diwan Singh was inducted as a tenant by Het Ram was duly acknowledged in the agreement (Ext.DW4/A). Vidya Devi and Begi Devi also acknowledged the possession of Diwan Singh. Learned Courts below had rejected these documents and had relied upon the oral evidence to hold that the possession of Diwan Singh was not found to be old, and he was put in possession after the death of Het Ram. This finding is contrary to the recital in the document (Ext.DW4/A). Hence, the learned Courts below had excluded the

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relevant evidence, which materially affected their judgments, and this substantial question of law is answered accordingly.

Substantial Question of Law No.2 :

29. Dashoda Devi (DW1) admitted in her cross-examination that she had made the statement marked A to A of the statement (Ext. PB), which reads that Diwan Singh was in possession of the land and house located at Village Kamnya for 10-12 years. This statement was made on 06.09.1980, and it also establishes the possession of Diwan Singh before the death of Het Ram. This admission was ignored by the learned Courts below, which affected their judgments adversely. Hence, this substantial question of law is answered accordingly.

Final Order:

30. In view of the above, the learned Courts below had excluded the relevant evidence; hence, the judgments and decrees passed by the learned Courts below are ordered to be set aside, and the suit filed by the plaintiffs is ordered to be decreed. The decree sheet be prepared accordingly.

31. The present appeals stand disposed of, and so also the pending miscellaneous applications, if any.

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32. The record of the learned Courts below be returned along with a copy of this judgment.

(Rakesh Kainthla)
Judge

5th November, 2026
(Nikita)