IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 4252 of 2013
Reserved on : 4.11.2026
Date of decision: 19.11.2026

Bali Ram ...Appellant.

Versus

Purva Nand & another ...Respondents.

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

Whether approved for reporting?[1]

For the appellant: Mr. N.K.Thakur, Senior Advocate with Mr. Karanveer Singh & Mr. Karan Sadyal, Advocates.

For the respondents: Mr. Ajay Kumar, Senior Advocate with Mr. Vinay Kumar Thakur, Advocate.

Romesh Verma, Judge

The present Regular Second Appeal arises out of the judgment and decree as passed by the learned District Judge, Kinnaur Civil Division at Rampur Bushahr, HP dated 19th January, 2013, whereby the appeal filed by the defendants was allowed and the judgment and decree as passed by the learned Civil Judge (Junior Division), Rampur Bushahr, District Shimla, H.P., dated 27th June, 2011, was reversed, and the suit as filed by the plaintiff was ordered to be dismissed.

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

2. The facts, as emerge in the present case, are that the plaintiff/appellant filed a suit for permanent prohibitory injunction restraining the defendants from interfering and raising construction over the land comprised in Khata/Khatauni No. 66/222 min, Khasra Nos. 1398 and 1399, Kitta 2, measuring 0-04-42 hectares, situated in Mauza Kasha (12/20), Tehsil Rampur Bushahr, District Shimla, H.P.

3. As per the case asserted by the appellant, the plaintiff and the defendants along with the other co-sharers are the recorded co-owners in possession of the land comprised in Khata/Khatauni No. 66/222 min, Khasra Nos. 1398 and 1399, Kitta 2, measuring 0-04-42 hectares, situated in Mauza Kasha, Tehsil Rampur Bushahr, District Shimla, H.P.

4. In the plaint it was asserted by the plaintiff that in a family partition which was effected between the father of the plaintiff and the legal heirs of late Shri Thau in the year 1960, the suit land had fallen to the share of the father of the plaintiff, and thereafter he had been in exclusive possession of the same till his death. The father of the plaintiff expired on 24th December, 1994. Thereafter, the suit land is coming in the exclusive possession of his legal heirs, including the plaintiff.

5. The legal heirs of the father of the plaintiff consist of a joint family and the plaintiff, being the eldest male member, manages the entire affairs of the family. As per the plaintiff, his father had constructed two-storeyed house and threshing yard over a portion of the suit land, but later on, the said house was dismantled and the slates of the threshing yard were removed. The suit land has not been partitioned by metes and bounds, therefore, the name of the defendants have not been deleted from the column of ownership. Under the garb of such fictitious entries, the defendants tried to dispossess the plaintiff from the suit land, but such illegal designs were foiled by the plaintiff.

6. It was alleged that on 10th May, 2008, the defendants openly declared that they would construct a house over the suit land and tried to stack stones over the suit land to lay foundation for the proposed house. Defendant No. 1 threatened the plaintiff to do away with his life and did not accede to the request as made by the plaintiff. Therefore, under such circumstances, the plaintiff filed a suit seeking a decree of injunction restraining the defendants from interfering and raising construction over the land comprised in Khewat/Khatauni No. 66/222 min, Khasra

Nos. 1398 and 1399, measuring 0-04-42 hectares, situated in Kasha (12/20), Tehsil Rampur Bushahr, District Shimla, H.P.

7. The suit as filed by the plaintiff/appellant was resisted by the defendants by filing written statement taking therein preliminary objections with respect to maintainability, cause of action, jurisdiction, etc. On merits, all the averments as made in the plaint were specifically refuted and denied.

8. It was averred by the defendants that they are not raising any construction on the suit land, that is on Khasra Nos. 1398 and 1399. As a matter of fact, they are repairing and raising third storey on the existing old house and changing the roof by replacing the same by placing C.G.I. sheets on the old house which exists on Khasra No. 1394, which has been wrongly depicted in the revenue records in the ownership of one Shri Sattan Dass. It was contended that the father of the plaintiff, late Shri Ghesu alias Keshav Ram, ignoring the family partition effected during the year 1960, moved an application for partition of the land owned by the then co-sharers during the year 1981, with the consent of the parties, the application was allowed by the Assistant Collector 1st Grade, Rampur Bushahr, and the mode of partition was passed. In the said proceedings, Khasra

No. 1361, which was in possession of late Ghesu alias Keshav Ram, fell into the share of the defendants, as Ghesu alias Keshav Ram was in possession of land more than his share. As father of plaintiff was not inclined to part with the possession, on an application, the Assistant Collector 1st Grade, Rampur, issued a warrant of possession, whereby on 13.07.1989, the Field Kanungo visited Village Kasha for the execution of the warrant. Late Shri Ghesu alias Keshav Ram came forward with a plea that instead of Khasra No. 1361, he was prepared to part with Khasra Nos. 967, 968, 1398, and 1399, and the possession of these Khasra numbers was delivered to the defendants on the spot on 13.07.1989, and since then, the suit land is in possession of the defendants as owners.

9. As per the defendants, in light of the above, the plaintiff and the other co-sharers have got no right, title, or interest over the suit land. It is the stand of the defendants that since 13.07.1989, the suit land and the other land, that is Khasra Nos. 967 and 968, which was surrendered by father of the plaintiff late Shri Ghesu alias Keshav Ram in lieu of Khasra No. 1361, is in possession of the defendants as owners, and they are enjoying the same without any interruption from any side. The

possession of the suit land was delivered to the defendants by the revenue field agency in the year 1989, and there existed no house or any structure on any portion of the suit land. It was submitted that the suit land is in the absolute possession of the defendants, and the entire story as projected by the plaintiff is false, incorrect, and imaginary. It was prayed that the suit as filed by the plaintiff deserves to be dismissed.

10. The plaintiff/appellant filed replication to the written statement, whereby all the averments as made in the written statement were denied and the averments as made in the plaint were reiterated.

11. The learned trial Court, on 30.09.2008 and 06.01.2009, had framed the following issues:

> 1. Whether the plaintiff is entitled for the relief of permanent perpetual injunction, as prayed for? OPP.
>
> 2. Whether the suit of the plaintiff is not maintainable in the present form? OPD.
>
> 3. Whether the suit is bad for non-joinder of necessary parties? OPD.
>
> 4. Whether the plaintiff is estopped from filing the present suit? OPD.
>
> 5. Whether the plaintiff has no cause of action to file the present suit? OPD.

6. Whether the plaintiff has not come to the Court with clean hands, as alleged? OPD.

6A. Whether there was a partition in between the parties and in that partition the land comprised in Khasra No.1361 has been allotted to the defendants? OPD.

6B. Whether the suit land was surrendered by the father of the plaintiff in favour of the defendants in lieu of land comprised in Khasra No.1361, as alleged? OPD.

7. Relief.

12. The learned trial Court directed the respective parties to adduce evidence in support of their contentions, and vide its judgment and decree dated 27.06.2011, the suit as instituted by the plaintiff/appellant for permanent prohibitory injunction was decreed. The learned trial Court decreed the suit as filed by the plaintiff to the effect that the defendants are permanently restrained from interfering and raising construction over the land comprised in Khewat/Khatauni No. 66/222 min, Khasra Nos. 1398 and 1399, measuring 0-04-42 hectares, situated in Kasha (12/20), Tehsil Rampur Bushahr, District Shimla, till the same is partitioned by metes and bounds.

13. Feeling dissatisfied, the defendants preferred an appeal in the Court of learned District Judge, Kinnaur Civil

Division at Rampur Bushahr, on 06.07.2011 by invoking the provisions of Section 96 of the Code of Civil Procedure.

14. The learned First Appellate Court, vide its impugned judgment and decree dated 19.01.2013, accepted the appeal as filed by the defendants and reversed the findings as returned by the learned trial Court. The First Appellate Court, after accepting the appeal, dismissed the suit as filed by the plaintiff/present appellant.

15. Feeling aggrieved, the plaintiff has approached this Court by filing the instant Regular Second Appeal under the provisions of Section 100 of the Code of Civil Procedure.

16. It is contended by Mr. N.K.Thakur, learned Senior Counsel assisted by Mr. Karanveer Singh & Mr. Karan Sadyal, Advocates, for the appellant that the impugned judgment and decree as passed by the learned District Judge is erroneous and liable to be quashed and set aside. He also submits that the learned First Appellate Court has not appreciated the point in controversy and has wrongly reversed the well-reasoned judgment as passed by the learned trial Court. He also submits that the learned First Appellate Court has gone astray in the matter by accepting the appeal filed by the defendants and by

dismissing the suit as filed by the present appellant. He would contend that after accepting the present Regular Second Appeal, the suit as filed by the plaintiff/appellant deserves to be decreed.

17. On the other hand, Mr. Ajay Kumar, learned Senior counsel assisted by Mr. Vinay Kumar Thakur, Advocate, for the respondents has defended the impugned judgment. He submits that the learned First Appellate Court has appreciated the point in controversy in its true perspective, and this Court, while exercising the power under Section 100 of the Code of Civil Procedure, will not disturb the well-reasoned judgment as passed by the learned District Judge, Kinnaur at Rampur Bushahr, District Shimla, H.P. He prayed for the dismissal of the appeal as filed by the plaintiff/appellant.

18. This Court admitted the appeal on 3rd December, 2013, on the following substantial question of law:-

> 1. Whether the pleadings of the parties and oral as well as documentary evidence available on record has been misread and misconstrued by the lower appellate Court and on that account the judgment and decree impugned in this appeal being perverse and vitiated is not legally sustainable?

19. I have heard the learned counsel for the parties and gone through the case file.

20. In the present case, the plaintiff/appellant approached the learned trial Court seeking a decree of permanent prohibitory injunction restraining the defendants from interfering in the suit land and raising any kind of construction over the land comprised in Khewat/Khatauni No. 66/222 min, Khasra Nos. 1398 and 1399, Kitta 2, measuring 0-04-42 hectares, situated in Mauza Kasha (12/20), Tehsil Rampur Bushahr, District Shimla, H.P.

21. It is the case of the plaintiff that a family partition was effected between the father of the plaintiff and the legal heirs of late Shri Thau in the year 1960. The suit land had fallen into the share of the father of the plaintiff, and thereafter his father remained exclusive owner in possession of the same till his death. The father of the plaintiff expired on 24th December, 1994, and thereafter the suit land is coming in the exclusive possession of the legal heirs of the father of the plaintiff, including the present appellant.

22. As per the case set up by the plaintiff, on 10.05.2008, the defendants openly declared that they would construct a house over the suit land, though the suit land was not partitioned by metes and bounds. Therefore, it was prayed that a decree for

permanent prohibitory injunction be passed in favour of the plaintiff and against the defendants.

23. The suit has been contested on behalf of the defendants primarily by refuting and denying all the averments as made in the plaint. It has been contended that the father of the plaintiff, late Shri Ghesu alias Keshav Ram, ignored the family partition which was effected between the parties during the year 1960. Father of the plaintiff moved an application for partition of the land owned by the then co-sharers during the year 1981, and with the consent of the parties, the Assistant Collector allowed the application and the mode of partition was passed. In the said partition proceedings, Khasra No. 1361, which was in possession of late Ghesu alias Keshav Ram, fell into the share of the defendants. As father of plaintiff was in possession of the land more than his share, and he was not inclined to part with the possession of Khasra No. 1361, he came up with a plea that instead of Khasra No. 1361, he was ready to part with Khasra Nos. 967, 968, 1398, and 1399, and thereafter the possession of these Khasra numbers was delivered to the defendants on the spot on 13.07.1989, and

since then, the suit land is in possession of the defendants as owners.

24. As per the defendants, they are the owners in possession since 13.07.1989, and the story as projected by the plaintiff is false, incorrect, and concocted.

25. The plaintiff, in order to corroborate his case, has filed his affidavit, Exhibit PW-1/A, and he has reiterated all the averments as made in the plaint.

26. In cross-examination, PW-1 denied that his father had filed an application in the year 1980–81 before the Assistant Collector 1st Grade for the partition of the suit land. He stated that he does not know that the said application was allowed. He stated that he does not know about Khasra No. 1361. He admitted that his father had instituted a suit in the very same civil court with respect to Khasra Nos. 1361, 1398, and 1399. He admitted that on account of death of his father, the said suit was ordered to be dismissed. As per this witness after the dismissal of the suit, they filed the application for partition. He stated that he does not know that when the application for partition was filed by his father against the father of defendants and Sohan Dass, at that time, Sanad Takseem was prepared.

27. He stated that he does not remember that in the earlier instituted suit, he made the statement that his father had filed the application for the partition of the suit land in the year 1981, and that the said application was decided in the year 1984. He stated that he does not know that on 13.07.1989, the possession of Khasra Nos. 967, 968, 1398, and 1399 was handed over to the defendants on the spot. He denied that from the said date, the defendants are in possession of the suit land.

28. He admitted that over the suit land, the defendants did not made any attempt to raise any construction. Self-stated that the house has been constructed over Khasra No. 1398. PW-1 admitted that he had appended his signature over Exhibit DA. He stated that the said statement was made by him before Vice President of the Gram Panchayat, Kashapat, and the President of Gram Sudhar Committee. He has admitted that in order to file the instant suit, he was instigated by Shri Bir Chand and Lachmi Dass.

29. PW-2, Lachmi Dass in his affidavit, has also deposed on the same lines as has been done by PW-1. In his affidavit, he has stated that over the suit land, the father of the plaintiff had raised the construction of a house, and during his

life time, the old house was dismantled and in its place, a field was prepared over the same. He stated that over the suit land, it is the plaintiff and his family members, who are in possession.

30. In cross-examination, PW-2 has stated that he does not know that the father of the plaintiff, in the year 1981, filed an application for partitioning of the suit land. He stated that he does not know that in the said partition proceedings, the father of the plaintiff was found to be occupying land exceeding his share. He admitted that as per the same, the Patwari/Kanungo had recorded the statements of the parties as per which the suit land and the other land was to be delivered to the defendants on the spot. He admitted that he is not having good relations with Purva Nand, the defendant.

31. In order to rebut the case of the plaintiff, the defendant No.1 Purva Nand, filed his affidavit, Exhibit DW-3/A. He reiterated the averments as made in the written statement and contended in the affidavit that the father of the plaintiff was not happy with the family partition which was effected between the parties in the year 1960. Therefore, he filed an application in the year 1981 to get the suit land partitioned by metes and bounds.

The Assistant Collector 1st Grade, Rampur, accepted the said application and the Sanad Taqseem was prepared.

32. As per DW-3, on the basis of partition, Khasra No. 1361, which was in the possession of Ghesu alias Keshav Ram, fell into the share of the defendants. As he was occupying more land than his share, he did not want to part with Khasra No. 1361, a warrant of possession was issued by the Assistant Collector for the execution of the same, on 13.07.1989. The Field Kanungo visited the spot, where it was stated by Ghesu alias Keshav Ram that he was ready to part with Khasra Nos. 967, 968, 1398, and 1399 in lieu of Khasra No. 1361. On 13.07.1989, Khasra Nos. 1398, 1399, 967, and 968 were handed over to the defendants on the spot, and thereafter the defendants are owners in possession of the same. In the revenue records, the entries as have been incorporated are wrong and incorrect, and the suit land is in possession of the defendants. As per this witness, the plaintiff has got no right, title, or interest over Khasra Nos. 1398 and 1399 and the other land bearing Khasra Nos. 967 and 968. He stated that when the application was filed to obtain possession of the land, at that time the father of the plaintiff and the defendants had recorded

their statements before the Kanungo, and on the same, the parties had appended their signatures. As per this witness, the said writing was witnessed by Visheshar Lal, Main Ram, Lachhmi Dass, and Mirju Ram.

33. In cross-examination, DW-3 stated that the partition of suit land was effected in the year 1981. He stated that Khasra Nos. 1398 and 1399, prior to 1989, were with Ghesu Ram and thereafter came in possession of the defendants. He admitted that over the suit land, there is a two-storeyed structure, self-stated that the same was raised in the year 1960. He admitted that in the family partition, the suit land was not given to him.

34. Viseshwar Lal entered the witness box as DW-4, being a signatory to the statements which were recorded before the revenue authorities. He reiterated all the averments of the defendants. In his deposition, he stated that the suit land is in possession of the defendants since the year 1989. In July 1989, on the application of the defendants, the Kanungo, Patwari, and police came on the spot, as Khasra No. 1361 was allotted to the defendants. On the spot, the said Khasra number was in the possession of Ghesu alias Keshav Ram, and since he was not ready to part with the possession of the said Khasra number, the

warrant of possession was executed. When the revenue officer visited the spot, Ghesu alias Keshav Ram agreed to part with the land bearing Khasra Nos. 967, 968, 1398, and 1399. On the very same day, that is, 13th July, 1989, the said Khasra numbers were handed over to the defendants. The possession of the suit land was given to the defendants, and in that regard, the necessary statements were recorded before the Patwari/ Kanungo. The parties made their statements before the revenue authorities in his presence, and he appended his signatures over the said statement. He was present, at the time of recording of the statement, along with Shri Lachhmi Dass, Main Ram, and Mirju Ram. In cross-examination, he stated that Khasra Nos. 1398, 1399, 967 and 968 were delivered to the defendants.

35. The plaintiff has placed on record documentary evidence, including Exhibit PW-1/A, copy of the Jamabandi for the year 2005–06, whereby the suit land comprising Khasra Nos. 1398 and 1399 has been shown to be jointly owned by the parties. However, the same has been shown to be in exclusive possession of Bali Ram, the present appellant. On the strength of this revenue record, the plaintiff approached the Court for the grant of a decree of permanent prohibitory injunction.

36. Since the plaintiff had instituted a simpliciter suit for injunction, therefore, this Court has to determine whether it is the plaintiff or the defendants, who are in possession of the suit land. The defendants have placed on record the copy of the application which was filed for partition of the suit land, Exhibit DW-2/A, by Ghesu alias Keshav Ram against the defendants. The said document was heavily relied upon by the learned counsel for the respondents, being an instrument of partition. To the similar extent is the copy of Exhibit DA, the statement of the plaintiff- Bali Ram, the present appellant.

37. Exhibit DW-3/C is the most important document, which has been signed by Ghesu alias Keshav Ram, the predecessor-in-interest of the plaintiff, and the defendants. As per this document, it has been recorded by the revenue authorities that Khasra Nos. 1398 and 1399 were handed over to Purva Nand and Bali Ram alias Bala Nand on the spot.

38. It has rightly been stated by the learned Senior Counsel for the respondents that in the partition application filed by the father of the plaintiff, he had agreed to part with the suit land along with Khasra Nos. 967 and 968, and qua that effect, there is a statement, Exhibit DW-3/C, which categorically shows

and establishes that the suit land was delivered and handed over to the defendants on the spot.

39. This document, when read in conjunction with the oral evidence of the parties, specially PW-2, the witness of the plaintiff, established that the case as set up by the plaintiff is not sustainable. PW-2, Lachhmi Dass, specifically admitted in his cross-examination that in the partition proceedings, the Patwari / Kanungo had recorded the statements of the parties as per which the suit land and the other land was to be delivered to the defendants on the spot. He further stated in his cross-examination that he has strained relations with Purva Nand, the defendant. The said admission on the part of PW-2, the witness of the plaintiff, demolishes the case of the plaintiff and proves that the suit land, by virtue of the partition proceedings, was delivered to the defendants on the spot.

40. The statement of PW-2, when read in conjunction with the statement of DW-4, Visheshar Lal, who is the witness to the statements made by the parties, categorically indicates and shows that it is the defendants who are in possession of the suit land. He stated in his cross-examination that the suit land

bearing Khasra Nos. 1398 and 1399 was handed over and delivered to the defendants on the spot.

41. The documentary evidence, specially Exhibit DW-2/A and Exhibit DW-3/C, fortify the case of the defendants and substantiate the contention as raised by the defendants that in the partition proceedings, the suit land was handed over and delivered by the father of the plaintiff to the defendants, and the Statement to that effect has been duly signed by the respective parties on the spot.

42. The plaintiff has heavily relied on the copy of the Jamabandi for the year 2005–06. It seems that the necessary correction in the revenue record was not effected, though there is ample evidence on record that the possession of the suit land has been delivered to the defendants. While dealing with a case for the grant of a decree of injunction, this Court is only to determine and adjudicate the possession of the parties. From the material placed on record alongwith the documentary evidence, it can be safely held that it is the defendants who are in possession of the suit land. Therefore, the decree of injunction which was granted by the learned trial Court has rightly been set aside by the learned First Appellate Court. The learned First

Appellate Court has dealt with the case in hand in detail by taking into consideration each and every aspect of the case, including the documentary evidence, and has rightly come to the conclusion that the plaintiff has failed to establish and prove his case. This Court is in agreement with the findings returned by the learned First Appellate Court.

43. 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.

44. 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 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."

45. 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."

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

47. In view of the observations and findings as made here-in-above, especially in view of the findings as returned by the learned First Appellate Court, this Court does not find any illegality, perversity, or infirmity in the impugned judgment as passed by the learned District Judge, Kinnaur Rampur Bushahr. Therefore, the present appeal, being devoid of any merit, deserves to be dismissed.

48. The appeal is accordingly dismissed, with no order as to costs. All pending application(s), if any, shall also stand disposed of.

(Romesh Verma)
Judge

November 19, 2026
(Nisha)