IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 15 of 2025
Reserved on: 23.03.2026
Date of decision: 30.03.2026

Balwant Sigh ...Appellant

Versus

Harnam Singh ...Respondent

Coram:

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

Whether approved for reporting?[1]

For the appellant : Mr. Ajay Sharma, Senior Advocate with Mr. Atharv Sharma, Advocate.

For the respondent : Mr. Neeraj Gupta, Senior Advocate with Mr. Ajeet Pal Singh Jaswal, Advocate.

Romesh Verma, Judge :

The present appeal arises out of the judgment and decree, as passed by learned District Judge, Hamirpur, H.P. dated 11.12.2024, whereby the appeal filed by the present appellant was dismissed and the judgment and decree, as passed by learned Civil Judge, Court No.3, Hamirpur, H.P., dated 23.09.2023, was affirmed whereby the suit filed by the respondent/plaintiff for partition was decreed.

2. The brief facts of the case are that the respondent/plaintiff filed a suit for partition before learned Civil Judge, Court No.3, Hamirpur, H.P, on the ground that the parties are co-owners in joint possession of the suit property comprised in Khata No.26, Khatauni

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

No.44, Khasra No.512, area measuring 00-04-78 hectares and Khatauni No.45, Khasra No.514 area measuring 00-00-40 hectares (total area 00-05-18 hectares) as per jamabandi for the year 2011-2012, situated at Mohal Matahni, P.O. Daruni Tappa Bajuri, Tehsil and District Hamirpur, H.P. It was averred in the plaint that the suit property is joint and has not yet been partitioned through due process of law. The share of the plaintiff and defendant is equal i.e. 00-05-18/2 hectares. There are houses of the parties in the suit land. The parties had earlier filed a partition petition in the Revenue Court of Tehsildar, Hamirpur, H.P., but the same was disallowed on the ground that the suit land is build up and *Gair Mumkin Abadi* on the spot. Therefore, its partition is not within the jurisdiction of the revenue authority. The plaintiff is entitled for partition of the suit property and possession of his share. Therefore, it was prayed that preliminary decree for partition of suit property be passed in favour of the plaintiff and against the defendant with further prayer that for effecting partition, Court Commissioner may be appointed in terms of preliminary decree.

3. The suit was contested by the defendant by filing written statement raising preliminary objections regarding maintainability, estoppel, cause of action, non-joinder, jurisdiction etc. On merits, it was averred that the suit property is joint in the revenue record and the defendant has equal share with the plaintiff and there are houses of the parties. However, it was averred that the rest of the averments are

totally incorrect and the parties are in separate possession as per family arrangement since long and the plaintiff has acquired larger share in different khatas as per the family arrangement. Therefore, it was prayed that the suit as filed by the plaintiff be dismissed.

4. Learned trial Court framed on 19.12.2018 in the following manner:

> "1. Whether the parties are co-sharer in the suit land, as prayed for? OPP.
> 2. Whether the plaintiff is entitled for preliminary decree of partition, as prayed for? OPP.
> 3. Whether the suit of the plaintiff is not maintainable in the present form, as alleged ? OPD.
> 4. Whether the plaintiff is estopped by his own act and conduct from filing the present suit, as alleged? OPD.
> 5. Whether the suit is bad for non-joinder and mis-joinder of necessary parties, as alleged? OPD.
> 6. Whether the suit is without jurisdiction, as alleged? OPD.
> 7. Relief."

5. Learned trial Court directed the respective parties to adduce evidence in support of their contentions and finally, vide its judgment and decree dated 23.09.2023, the suit filed by the plaintiff was decreed and preliminary decree for possession by way of partition

of the property over the land comprised in Khata No.26, Khatauni No.44, Khasra No.512 area measuring 00-04-78 hectares and Khatauni No.45, Khasra No.514 area measuring 00-00-40 hectares (total area 00-05-18 hectares) situated at Mohal Matahni, P.O. Daruhi Tappa Bajuri, Tehsil and District Hamirpur, was passed to the effect that the plaintiff is owner to the extent of ½ share and the defendant is also owner to the extent of ½ share.

6. Feeling dissatisfied, the defendant preferred an appeal in the Court of learned District Judge, Hamirpur on 30.10.2023. Learned first appellate Court vide its judgment dated 11.12.2024 dismissed the appeal.

7. Still feeling aggrieved, the defendant has preferred the present regular second appeal.

8. It is contended by Mr. Ajay Sharma, learned Senior Counsel, duly assisted by Mr. Atharv Sharma, Advocate, that the learned Courts below have not appreciated the real point of controversy and have wrongly decreed the suit by passing a preliminary decree of possession by way of partition. He submitted that the suit property has already been partitioned amongst the parties by way of family partition and the parties are in separate possession of their share along with other parcels of the land. He submitted that since there is ample evidence on record that the parties are in separate possession of their share, therefore, it is presumed that the

suit property has been partitioned amongst the parties. The learned Courts below have wrongly passed a preliminary decree of possession by way of partition.

9. On the other hand, Mr. Neeraj Gupta, learned Senior Counsel for the plaintiff, duly assisted by Mr. Ajeet Pal Singh Jaswal, Advocate, has defended the impugned judgment and decree. He has submitted that there are concurrent findings of fact by the learned Courts below, which do not call for any interference. He further submitted that the learned Courts below after appreciating the oral as well as documentary evidence have rightly come to the conclusion that the suit property is joint amongst the parties, therefore rightly passed the preliminary decree of possession by way of partition of the suit property.

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

11. With the consent of the parties, the case is finally heard at admission stage.

12. The precise case of the plaintiff/respondent is that the suit property is joint amongst the parties and it has not been partitioned by metes and bounds. There are houses of the parties over the suit land. Therefore, preliminary decree for partition of the suit property be passed.

13. On the other hand, the precise defence/contention of the defendant is that the suit property has already been partitioned amongst the parties by way of family arrangement and the parties are in separate possession of their share along with other parcels of the land.

14. The plaintiff, in order to corroborate his claim, has placed on record, copy of jamabandi Ext. P-1, which shows that Harnam Singh, the plaintiff and Balwant Singh, the defendant, are the co-owners of the suit property comprising of Khara Nos.512 and 514at Mohal Matahni. The plaintiff has substantiated his claim in order to show that the suit property is joint amongst the parties being co-sharers.

15. It is well settled principle of law that presumption of truth is attached to the revenue record. In the present case, revenue record shows that the parties are co-sharers and joint owner-in-possession of the suit property. In order to prove his case, the plaintiff entered into the witness box as PW-1 and tendered his affidavit Ext. PW-1/A. In his deposition he has stated that he is having ancestral land comprising of Khata No.26, Khatauni No.44, Khasra No.512 area 0-04-78 hectares and Khatauni No.45, Khasra No.514 area 0-00-40 hectares, Kita 2 area in total 0-05-18 hectares, situated in Mohal Matahni Mouza Bajuri, Tehsil and District Hamirpur, H.P. as per jamabandi for the year 2011-2012 as a co-owner in joint possession with the defendant. The

suit property is joint amongst the parties and has not been partitioned through due process of law. Both the parties i.e. the plaintiff and the defendant are having ½ share each in the suit property to the extent of 0-02-59 hectares. The houses of both the parties are situated thereon over the suit land. Therefore, he prayed for a decree for partition for his share (PW-1) from the share of the defendant in the suit property and sought vacant possession. In the cross-examination, nothing substantial could be extracted from him by the defendant.

16. In order to corroborate its case, defendant examined Prem Kumari as DW-1. She submitted that she is the wife of defendant, Balwant Singh and Balwant Singh had executed special power of attorney Ext. DW-1/A in her favour. She submitted that the aforesaid suit property stood partitioned by way of family arrangement at the time of their ancestors. She further submitted that both the parties have separated the shares in equal share and in case there is any shortfall in that event the plaintiff can further partition the suit property. It was further submitted that the plaintiff is occupying excess portion of the suit property. Therefore, she submitted that the suit, in question, be dismissed.

17. DW-2 is the statement of Kanta Devi. She has also stated on the same lines as stated by DW-1.

18. RPW-2 Kesar Singh was examined in rebuttal by the plaintiff. Copy of site plan has been placed on record as Ext. PW-1/B

by the plaintiff in order to depict the site picture. The defendant except their bald averment that the suit property has been partitioned by way of family has not been able to place on record anything concrete. Though, it is the case of the defendant that on account of family arrangement parties are residing separately since time immemorial, however, no evidence or any revenue record has been placed on record qua the same. To the similar extent DW-2 Kanta Devi, in her cross-examination has admitted that she cannot produce any document to establish and prove that any family arrangement was executed between the parties. Ext. P-1 as placed on record by the plaintiff depicts the factual position on the spot and in order to rebut the same nothing has been placed on record by the defendant, save and accept the oral testimony of DW-1 and DW-2.

19. Even the self serving statement of the defendant do not prove that the alleged family arrangement, which was effected between the parties, was ever recorded in the revenue record. In the absence of incorporation of family arrangement in the revenue record, no reliance can be placed on the same. Although, it has been tried to be proved by the defendant that since the parties are separate in possession by virtue of some family arrangement, therefore, it can be deciphered that, by virtue of family arrangement, the suit property stood partitioned. However, merely on the ground that the parties are in separate possession does not mean that the suit property has been

partitioned by metes and bounds. The learned Courts below have concurrently held that the suit property to be joint amongst the parties on the strength of Ext. P-1 and this Court is of the opinion that the findings and reasoning as passed by the learned Courts below are legal, valid and sustainable.

20. The learned first appellate Court has come to the conclusion that preliminary decree for partition has rightly been passed by the learned trial Court. However, possession would be taken into consideration at the time of final partition subject to their share and value of land. No document has been placed on record to substantiate the plea of defendant that the suit property has been partitioned by means of family arrangement and that thereafter the parties are residing separately on the strength of the said arrangement. The property is held to be joint amongst the parties being co-owner and therefore, a co-owner of the property owns every part of the property along with others.

21. The learned Courts below have rightly come to the conclusion that the defendant has failed to prove any partition of the suit property. No final partition of the property by metes and bounds so as to effect severances of joint holdings has been proved by the defendant. Had it been so, parties would have definitely got this fact recorded in the revenue record and resorted to the mandatory provisions of Sections 35 and 135 of the H.P. Land Revenue Act. The

Act is a complete code in itself. It provides procedure for preparing revenue record. Under Section 35, any person acquiring right in an estate as a land owner is required to report the same to the Patwari of the estate, who in turn, is obliged to enter this fact in the register of mutations maintained by him. Whenever there is partition without intervention of the Revenue Officer, private party is required to apply to the Revenue Officer for order of confirmation/affirmation of partition. The Act provides that in such like cases Revenue Officer is mandatorily required to inquire the fact as to whether in fact partition was ever effected upon or not. Revenue Officer is required to comply with the statutory provisions laid down under Chapter 9 of the Act. In the present case parties have not resorted to such measures. Therefore, the partition as alleged by the defendant is not proved in the eyes of law.

22. The aforesaid reasoning is fortified by the judgment as rendered by this Court in case titled as ***Mangat Ram Vs. Gulat Ram (since deceased) through his LRs Jagdeep Kumar & Ors, Latest HLJ 2011 (HP) 274,*** wherein it has been held as under:

> *"19. Prior to passing of the order by the competent authority, no partition by metes and bounds ever took place between the parties. Court below rightly came to the conclusion that private partition was actually an arrangement for the purpose of cultivation of land. It was not a final partition of the land by metes and bounds so as to effect severances of joint holdings. Had it been so, parties would have definitely got this fact recorded in the*

revenue record and resorted to the mandatory provisions of Sections 35 and 135 of the Act. Act is a complete code in itself. It provides procedure for preparing revenue record. Under Section 35, any person acquiring right in an estate as a land owner is required to report the same to the Patwari of the estate, who in turn, is obliged to enter this fact in the register of mutations maintained by him. Whenever there is partition without intervention of the Revenue Officer, Private party is required to apply to the Revenue Officer for order of confirmation/affirmation of partition. The Act provides that in such like cases Revenue Officer is mandatorily required to inquire the fact as to whether in fact partition was ever effected upon or not. Revenue Officer is required to comply with the statutory provisions laid down under Chapter 9 of the Act. Admittedly in the instant case parties have not resorted to such measures. Partitions entered into in the year 1961 and 1972/74 is no partition in the eyes of law

20. This Court in Leetho vs. Chamelo & Ors. 2001 (2) Shim.L.C. 238, while dealing with the question of jurisdiction of the Civil Court to entertain a suit filed by the plaintiff, assailing the order, of partitioning the land, passed by the competent authority, has specifically held that partition, whether by way of family settlement or family arrangement or by Revenue Officer by giving effect to the family partition or settlement by metes and bounds, should be such which may conclusively establish the respective shares of the parties so as to stop further dispute in between them. Mere arrangement in regard to cultivation of land cannot be termed as partition though such arrangement at the time of final partition by Revenue Officer should be given due consideration in order to maintain possession of the parties intact."

23. In the present case also except the sole testimony of the defendant, nothing has been placed on record to substantiate or establish the family arrangement which may demonstrate that the suit property has been partitioned amongst the respective parties being co-owners. The learned Courts below have rightly thrashed the oral as well as documentary evidence placed on record and rightly come to the conclusion that the plaintiff is entitled for preliminary decree for partition.

24. The findings of facts as recorded by learned Courts below do not call for any interference especially in view of the judgment as passed by Hon'ble in ***Navaneethammal vs. Arjuna Chetty AIR 1996 SC 3521***, wherein it has been held as under:

> *"10. This Court, time without number, pointed out that interference with the concurrent findings of the courts below by the High Court under Section 100 CPC must be avoided unless warranted by compelling reasons. In any case, the High Court is not expected to re-appreciating the evidence just to replace the findings for the lower courts.*
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> *20. In our considered view the lower Appellate Court has fairly appreciated the evidence in the above background and has reached the conclusion that the suit was not barred by Limitation. Even assuming that another view is possible on a re-appreciation of the same evidence, that should not have been done by the High Court as it cannot be said that the view taken by the First Appellate Court was based on no material."*

25. Similarly, the Hon'ble Apex Court in ***Kshitish Chandra Purkait vs. Santosh Kumar Purkait and others (1997) 5 SCC 438*** has held as under:

> *"10. We would only add that (a) it is the duty cast upon the High Court to formulate the substantial question of law involved in the case even at the initial stage; and (b) that in (exceptional) cases, at a later point of time, when the Court exercises its jurisdiction under the proviso to sub-section (5) of Section 100 C.P.C in formulating the substantial question of law, the opposite party should be put on notice thereon and should be given a fair or proper opportunity to meet the point. Proceeding to hear the appeal without formulating the substantial question of law involved in the appeal is illegal and is an abnegation or abdication of the duty cast on Court; and even after the formulation of the substantial question of law, if a fair or proper opportunity is not afforded to the opposite side, it will amount to denial of natural justice. The above parameters within which the High Court has to exercise its jurisdiction under Section 100 CPC should always be borne in mind. We are sorry to state that the above aspects are seldom borne in mind in many cases and second appeals are entertained and/or disposed of, without conforming to the above discipline.*
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> *11. The guidelines to determine as to what is a "substantial question of law" within the meaning of Section 100 CPC, have been laid down by this Court in a Constitution Bench decision in Chunilal V. Mehta and Sons Ltd. v. Century Spg. and Mfg. Co. Ltd There is also a later decision of this Court in Mahindra and Mahindra Ltd. v. Union of India3. It is unnecessary to deal at length with that aspect any further."*

26. In ***Kondiba Dagadu Kadam vs. Savitribai Sopan Gujar and others, AIR 1999 SC 2213***, the Hon'ble Supreme Court has held as under:

> *"5. 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 are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate Court unless 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 without evidence."*

27. In ***Naresh and others vs. Hemant and others, (2022) 18 SCC 802***, the Hon'ble Supreme Court held as under:

> *"10. The High Court invoked the presumption without proper consideration and appreciation of the facts considered and dealt with by two courts holding by reasoned conclusions why the presumption stood rebutted on the facts. The High Court also committed an*

error of record by holding that there was no evidence that Trimbakrao Ingole alone had constructed the house, a finding patently contrary to the admission of PW-1 in his evidence. The fact that mutation also was done in the name of Trimbakrao Ingole alone which remain unchallenged at any time was also not noticed. The conclusion of the High Court that improper appreciation of evidence amounted to perversity is completely unsustainable. No finding has been arrived at that any evidence had been admitted contrary to the law or that a finding was based on no evidence only in which circumstance the High Court could have interfered in the second appeal.

2. *The High Court therefore manifestly erred by interfering with the concurrent findings on facts by two courts below in exercise of powers under Section 100, Civil Procedure Code, a jurisdiction confined to substantial questions of law only. Merely because the High Court may have been of the opinion that the inferences and conclusions on the evidence were erroneous, and that another conclusion to its satisfaction could be drawn, cannot be justification for the High Court to have interfered.*

12. In Madamanchi Ramappa v. Muthaluru Bojappa, (1964) 2 SCR 673, this court with regard to the scope for interference in a second appeal with facts under Section 100 of the Civil Procedure Code observed as follows:

> *"12. ….The admissibility of evidence is no doubt a point of law, but once it is shown that the evidence on which courts of fact have acted was admissible and relevant, it is not open to a party feeling aggrieved by the findings recorded by the courts of*

fact to contend before the High Court in second appeal that the said evidence is not sufficient to justify the findings of fact in question. It has been always recognised that the sufficiency or adequacy of evidence to support a finding of fact is a matter for decision of the court of facts and cannot be agitated in a second appeal. Sometimes, this position is expressed by saying that like all questions of fact, sufficiency or adequacy of evidence in support of a case is also left to the jury for its verdict. This position has always been accepted without dissent and it can be stated without any doubt that it enunciates what can be properly characterised as an elementary proposition. Therefore, whenever this Court is satisfied that in dealing with a second appeal, the High Court has, either unwittingly and in a casual manner, or deliberately as in this case, contravened the limits prescribed by s. 100, it becomes the duty of this Court to intervene and give effect to the said provisions. It may be that in some cases, the High Court dealing with the second appeal is inclined to take the view that what it regards to be justice or equity of the case has not been served by the findings of fact recorded by courts of fact; but on such occasions it is necessary to remember 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."

13. Though precedents abound on this settled principle of law, we do not consider it necessary to burden our discussion unnecessarily except to rely further on Gurdev Kaur v. Kaki, (2007) 1 SCC 546, holding as follows:

"71. The fact that, in a series of cases, this Court was compelled to interfere was because the true legislative intendment and scope of Section 100 CPC have neither been appreciated nor applied. A class of judges while administering law honestly believe that, if they are satisfied that, in any second appeal brought before them evidence has been grossly misappreciated either by the lower appellate court or by both the courts below, it is their duty to interfere, because they seem to feel that a decree following upon a gross misappreciation of evidence involves injustice and it is the duty of the High Court to redress such injustice. We would like to reiterate that the justice has to be administered in accordance with law.

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73. The Judicial Committee of the Privy Council as early as in 1890 stated that there is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however gross or inexcusable the error may seem to be, and they added a note of warning that no court in India has power to add to, or enlarge, the grounds specified in Section 100.

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81. Despite repeated declarations of law by the judgments of this Court and the Privy Council for over a century, still the scope of Section 100 has not been correctly appreciated and applied by the High Courts in a large number of cases. In the facts and circumstances of this case the High Court interfered with the pure findings of fact even after the amendment of Section 100 CPC in 1976. The High Court would not have been justified in interfering with the concurrent findings of fact in this case even prior to the amendment of Section 100 CPC. The judgment of the High Court is clearly against the provisions of Section 100 and in no uncertain terms clearly violates the legislative intention.

82. In view of the clear legislative mandate crystallised by a series of judgments of the Privy Council and this Court ranging from 1890 to 2006, the High Court in law could not have interfered with pure findings of facts arrived at by the courts below. Consequently, the impugned judgment is set aside and this appeal is allowed with costs."

14. The order of the High Court interfering with concurrent findings of facts by two courts is, therefore, held to be unsustainable in exercise of the powers under Section 100 of the Civil Procedure Code. The order of the High Court is consequently set aside. The orders dated 06.03.1998 and 13.06.2002 of the Trial Court and the First Appellate Court are restored. The suit of the plaintiffs is dismissed. The present appeal is allowed."

28. In ***Brij Narayan Shukla (dead)through legal representatives vs. Sudesh Kumar Alias Suresh Kumar (dead)***

through Legal Representatives and others, (2024) 2 SCC 590, the Hon'ble Supeme Court held as under:

> *"10.2 The High Court was hearing the Second Appeal under section 100 of Code of Civil Procedure, 1908 and it having reappreciated the findings to disturb findings of fact, committed an error."*

29. In ***Civil Apepal No.5131 of 2025, titled as R. Nagaraj (dead) through LRs and another vs. Rajmani and others***, the Hon'ble Supreme Court held as under"

> *"7. By the impugned judgment and order and without answering anything on the substantial questions of law framed/formulated, absolutely in a casual manner, the High Court has allowed the Second Appeal and has set aside the concurrent findings recorded by both the courts below and thereafter has remanded the matter to the learned trial Court permitting the original plaintiff to amend the plaint and pray for fixation of the boundary.*
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> *9. Having heard learned counsel for the respective parties and having gone through the impugned judgment and order passed by the High Court, we are constrained to observe that the manner in which the High Court has dealt with the Second Appeal under Section 100 of the CPC is not appreciable at all. From the impugned judgment and order passed by the High Court, it appears that the High Court has exercised the powers as if the High Court was deciding the Writ Petition under Article 226 of the Constitution of India. The High Court has not appreciated at all that the High Court was deciding the Second Appeal under Section 100 of the CPC and that too against the concurrent findings of fact by both the courts below, which were, as such, on appreciation of evidence on record.*

> *Under the circumstances, the impugned judgment and order passed by the High Court is unsustainable.*
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> *11. At the cost of repetition, it is observed that the High Court was dealing with the Second Appeal under Section 100 CPC and the concurrent findings recorded by both the courts below which were on appreciation of evidence on record. Neither at the stage of deciding the suit nor even before the first Appellate Court even such a prayer was made to amend the plaint, which is now permitted by the High Court, despite the fact that earlier in the suit during the course of trial, the plaint was amended. Under the circumstances also, the impugned judgment and order passed by the High Court is unsustainable."*

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

31. Both the Courts below have rightly appreciated the Point in controversy after considering the oral as well as documentary evidence placed on record. No question of law much less substantial question of law arises in the present case.

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

(Romesh Verma)
Judge

30th March, 2026.
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