IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 93 of 2026
Date of decision: 28.10.2026

Ram Singh ...Appellant.

Versus

Nand Lal ...Respondent.

Coram:

The Hon'ble Mr. Justice Romesh Verma, Judge.
Whether approved for reporting?[1]

For the appellant : Mr. Lokender Paul Thakur and Mr. Arun Kumar, Advocates.

For the respondent : Mr. Janesh Gupta, Advocate.

Romesh Verma, Judge (Oral):

CMP No.8478 of 2026

1. The appellant has filed the instant application under the provisions of Order 41 Rule 27 of the CPC for producing additional evidence in the shape of a judgment passed by the learned District Judge.

2. By means of this application, the appellant intends to place on record a copy of the judgment in the case titled *Ram Singh versus Nand Lal, bearing Civil Appeal No. 11/13 of 2020*, dated 18.08.2022.

3. The provisions of Order 41 Rule 27 of CPC read as follows:

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

> *" 27. Production of Additional Evidence in Appellate Court. (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if:*
> *(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or*
> *(aa) the party seeking to produce additional evidence establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or*
> *(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.*
> *(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.*

4. A perusal of the provisions, as reproduced hereinabove, shows that the party who seeks to produce additional evidence must establish that, notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed.

5. Admittedly, in the present case, the judgment was passed by the learned District Judge, Bilaspur, on 15.12.2025 and the application has been filed on 16.03.2026. The appellant has failed to establish that what prevented him from placing on record the said

judgment when the matter was pending before the learned District Judge, Bilaspur, at the relevant time.

6. As rightly pointed out by the learned counsel for the respondent that as per the parameters laid down by the provisions of the CPC, the appellant has failed to establish due diligence as to why such a document pertaining to the year 2022 was not placed on record by the present appellant before the learned First Appellate Court. Therefore, at this stage, that too, at the stage of a regular second appeal, the application for additional evidence cannot be allowed.

7. Learned counsel for the respondent, in support of his contention, has relied upon the judgment of Hon’ble Apex Court in ***Gobind Singh versus Union of India, 2026 LiveLaw (SC) 221***, wherein the Hon'ble Supreme Court, after referring to its earlier decision in ***State of Karnataka versus K.C. Subramanya, (2014) 13 SCC 468***, has held that unless the requirements stipulated under Order 41 Rule 27 of the CPC are strictly satisfied, a party cannot be permitted to adduce additional evidence at the appellate stage. Such permission cannot be granted as a matter of course, nor can additional evidence be introduced at the whim or convenience of the litigating party. Moreso, the learned counsel for the applicant could not establish that how the said document is material or relevant for the adjudication of the present case. It could not be proved by the appellant that the

document intended to be placed on record will help this Court for the passing of the judgment.

8. Therefore, this Court is of the considered opinion that the present appellant cannot be permitted to place on record the document in question at the stage of a regular second appeal.

9. Consequently, the application is ordered to be dismissed.

RSA No. 93 of 2026

10. The instant Regular Second Appeal arises out of the judgment and decree passed by the learned District Judge, Bilaspur, dated 15.12.2025, whereby the appeal filed by the present appellant/plaintiff came to be dismissed and the judgment and decree passed by the learned Senior Civil Judge, Bilaspur, District Bilaspur, H.P., dated 30.03.2024, was affirmed, whereby the suit filed by the plaintiff for damages was ordered to be dismissed.

11. The facts, as emerge in the present case, are that the plaintiff/appellant filed a suit for damages amounting to Rs. 96,700/- in the Court of the learned Senior Civil Judge, Bilaspur, District Bilaspur, on 27.10.2014. As per the case set up by the plaintiff, he raised construction on the land comprised in Khewat No.18 min, Khatauni No.27, Khasra No. 244/233, measuring 0.8 bighas, situated at Village Bamta, Tehsil Sadar, District Bilaspur, H.P., after proper demarcation of the land.

12. It is the case of the plaintiff that on 09.03.2013, at about 2:30 PM, the defendant, along with his brother Shri Surender Kumar and 4-5 other persons, came to the house of the plaintiff from his land, which is on the higher side and they started abusing the plaintiff. When questioned by the mason, namely, Roshan Lal, who was working on the backside top of the house, the defendant pounced upon the persons at work and, along with other persons, started pulling down the back wall and side wall of the house from the top, as well as the shuttering and iron bars laid for the partial slab. They entered into the house from the site of the broken wall and in that regard, a complaint was also filed before the Superintendent of Police and the Chief Judicial Magistrate, Bilaspur.

13. It is the case of the plaintiff that the defendant caused damage to his property/house, which was assessed by the retired engineer Shri S.S. Patial, amounting to Rs.76,700/- for the reconstruction of the works. It was further submitted that the defendant had taken away a bag of material containing sanitary and electrical fittings amounting to Rs.20,000/-. Therefore, under such circumstances, the plaintiff filed a suit for the grant of a decree of damages to the tune of Rs.96,700/- in favour of the plaintiff and against the defendants, along with interest at the rate of 12% per annum.

14. The suit filed by the plaintiff came to be resisted by the defendant/respondent by filing a written statement wherein preliminary objections with respect to maintainability, cause of action, estoppel, non-joinder, etc. were raised. On merits, all the averments made in the plaint were specifically refuted and denied. As per the defence raised by the defendant, the plaintiff is trying to forcibly raise construction and encroach over the land of the defendant. The land was demarcated, and it was found that the plaintiff was trying to raise a boundary wall on the land owned by the defendant. The plaintiff thereafter got the material removed, but his evil eye is on the land of the defendant and he is trying to encroach the same. As per the defendant, he never went to the house of the plaintiff, never abused the plaintiff in any manner, and it is totally wrong that the defendant, along with other persons, damaged the wall of the plaintiff. In the defence, it was stated that the plaintiff himself is not accepting the demarcation and is also not allowing the demarcation on the spot, as he is a quarrelsome person and has dragged all his neighbours into false litigation. Therefore, after denying all the averments made in the plaint, the defendant prayed for the dismissal of the suit filed by the plaintiff/appellant.

15. The plaintiff filed a replication to the written statement, whereby all the averments made in the plaint were reiterated.

16. The learned trial Court framed the issues in the matter on 15.11.2016 in the following manner:

1. Whether the plaintiff is entitled for damages amounting to Rs.96,700/- alongwith interest from defendant, as claimed?.....OPP.
2. Whether the suit of the plaintiff is not maintainable, as alleged? .... OPD
3. Whether the plaintiff has no enforceable cause of action to file the present suit, as alleged? ....OPD
4. Whether the plaintiff has not approached the Court with clean hands and suppressed the material fact, as alleged? .... OPD
5. Whether the plaintiff has no locus standi to file the present suit, as alleged? ...OPD.
6. Whether the plaintiff is estopped by his own act and conduct from filing present suit, as alleged? OPD
7. Whether the suit is bad for non-joinder of necessary parties, as alleged? ...OPD.
8. Relief.

17. The learned trial Court directed the respective parties to adduce evidence in support of their contentions and vide its judgment and decree dated 30.03.2024, dismissed the suit filed by the plaintiff/appellant for the grant of decree of damages.

18. Feeling aggrieved, the plaintiff approached the Court of the learned District Judge, Bilaspur, by invoking the provisions of Section 96 of CPC. The learned First Appellate Court, vide its

impugned judgment dated 15.12.2025, dismissed the appeal filed by the plaintiff and affirmed the findings returned by the learned trial Court.

19. Still feeling dissatisfied, the plaintiff has approached this Court by filing the instant Regular Second Appeal under the provisions of Section 100 of the CPC.

20. It is contended by Mr.Arun Kumar, learned counsel for the appellant, that the impugned judgments and decrees as passed by the learned Courts below are erroneous and liable to be quashed and set aside. He submitted that the learned Courts below have not appreciated the real point of controversy and have wrongly dismissed the suit filed by the plaintiff. He would submit that after accepting the present appeal, the suit filed for grant of a decree of damages deserves to be allowed.

21. On the other hand, learned counsel for the respondent has defended the impugned judgment and decree passed by the learned Courts below and submitted that this Court while exercising the power under Section 100 of CPC will not disturb the concurrent findings of fact returned by the learned Courts below.

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

23. With the consent of the parties, the present regular second appeal is heard finally on the following substantial question of law:

> Whether the dismissal of the suit of plaintiff for damages is the result of mis-appreciation of pleadings and evidence by ignoring the same hence it caused prejudice to the plaintiff?

24. In the present case, the plaintiff approached the learned trial Court for the grant of damages to the tune of Rs. 96,700/- on the ground that after obtaining demarcation, the plaintiff raised construction over the land comprised in Khewat No. 18 min, Khatauni No. 27, Khasra No. 244/233, measuring 0.8 bighas, situated at Village Bamta, Tehsil Sadar, District Bilaspur, H.P. It is the case of the plaintiff that on 09.03.2013, at about 2:30 PM, the defendant, along with his brother Shri Surender Kumar and 4-5 other persons, came to the house of the plaintiff, which is situated on a higher side and started abusing the plaintiff. When the defendant was confronted by Shri Roshan Lal, mason, who was working on the spot, the defendant assaulted the plaintiff and started pulling down the construction, especially the back wall and the side wall and thereafter the shuttering and iron bars laid for the partial slab were also dismantled. Therefore, the plaintiff prayed for the grant of a decree of damages to the tune of

Rs. 96,700/- along with interest at the rate of 12% per annum in the form of damages.

25. The defendant denied the case set up by the plaintiff. Rather, it is the case of the defendant that it is the plaintiff who is trying to encroach over the land owned and possessed by him. He denied all the averments by stating that neither he abused the plaintiff in any manner nor he caused any damage to the property of the plaintiff or to the workers who were working on the spot. It is the case of the defendant that the present plaintiff is a chronic litigant, in the habit of quarrelling with neighbours and is facing various cases against him.

26. In order to corroborate his case, the plaintiff examined himself as PW-1. The plaintiff placed on record his affidavit, Ext. PW-1/A, whereby all the averments made in the plaint were reiterated.

27. In cross-examination, he admitted that prior to 2010, the suit land had been demarcated twice. He admitted that Nand Lal, defendant, and others had demarcated their land on the orders of the Tehsildar and the same is correct. He showed ignorance that in the demarcation carried out by the defendant, it was found that the plaintiff had encroached upon the land owned by the defendant. In further cross-examination, he stated that it is incorrect that in order to prove his case, he has not placed on record any orders or report of the revenue authority. He denied that Roshan Lal and Sohan Singh are his permanent witnesses. PW-1 admitted that he alleged in the plaint that

for dismantling the wall, the defendant along with 5 to 6 persons had come to the spot and that he has not arrayed those persons as party defendants.

28. PW-2 is Shri Sohan Lal, who stated in his affidavit, Ext. PW-2/A, that he was working as a labourer at the house of Ram Singh. He stated that he, along with mason Shri Roshan Lal and one Shri Gorakh Ram, labourer, were working on the spot at the house of Shri Ram Singh, the plaintiff; that on 09.03.2013, at 2:30 PM, Shri Nand Lal and his brother Shri Surender Kumar, along with 4-5 persons, came to the house of Ram Singh and started quarrelling with them. When confronted, Surender Kumar, the brother of the defendant, pounced upon Shri Roshan Lal, who was working on the spot and the defendant along with other persons started pulling down the back and side walls and also pulled down the shuttering and iron bars laid to stop rain water from the second floor. As per PW-2, this fact was informed by Shri Roshan Lal, mason, to the plaintiff Ram Singh, who asked them to save themselves as he was busy in the medical treatment of his son at PGI, Chandigarh.

29. In cross-examination, PW-2 admitted that on behalf of Ram Singh, the plaintiff, he has appeared in the witness box in other cases. He stated that the wall was dismantled by 5 to 6 persons and all of whom were male members. He stated that the wall was being erected as the rain water of the defendant was entering the house of

the plaintiff. He stated that he could not say how much sand or iron was used for the construction of the walls. He cannot say who were the masons or labourers for the construction of retaining wall. He had gone to the spot only on the date of occurrence. He stated that he does not remember how much payment was made by the plaintiff to him. He could not say for how many days he worked at the house of the plaintiff. He admitted that in his presence, no demarcation was conducted by the revenue authority. As per this witness, he does not know that as per the demarcation report, it was found that Ram Singh had encroached over the land of the defendant. He stated that he does not know what construction material was taken away by the defendant from the spot.

30. PW-3 is the statement of Shri Sohan Singh Patial. He stated that he visited the site, i.e., the house of Ram Singh, on 21.09.2014, and inspected the damaged portion of the house at the back of the third storey, noted the loss to the house of Ram Singh and thereafter assessed the value of loss and reconstruction.

31. In cross-examination, he admitted that he cannnot state the measurement, length or breadth of the wall. He admitted that the plaintiff, Ram Singh, had retired from the Public Works Department as a Head Draughtsman. He admitted that the report was prepared by him on the asking of the plaintiff, PW-1.

32. PW-4 is the statement of Shri Roshan Lal, who stated that he was working as a mason for construction of the third floor of the plaintiff along with Shri Sohan Singh and Gorakh Ram. He reiterated the averments of the plaint and stated that the defendant along with his brother Surender and 4-5 persons came on the spot and started quarrelling with them and when confronted, they started dismantling the suit property.

33. In cross-examination, he stated that he worked on the suit property for about 2 to 3 days on the asking of plaintiff Ram Singh. He stated that he cannot say by which mason the wall was re-erected after being dismantled. He could not say what was the age of persons accompanying the defendant. He stated that he did not see whether the persons who had come on the spot were carrying any *gainti* or *belcha*. He admitted in cross-examination that he does not know who dismantled the wall on the spot.

34. The plaintiff has mainly relied upon the statements of PW-2 and PW-4 to prove his case. Though as per the plaint, particularly paragraph 4, it was asserted that on 09.03.2013, at about 2:30 PM, the defendant along with his brother Shri Surender Kumar and other 4-5 persons came to his house, situated on a higher pedestal and started abusing the plaintiff. On the contrary, when the plaintiff entered the witness box, he admitted in cross-examination that on the day the wall was allegedly dismantled, he had gone to Chandigarh for the medical

check-up of his son. This is a major contradiction in the case as set up by plaintiff which has not been dispelled by him in the case at hand.

35. The plaintiff has tried to substantiate his case on the strength of the testimonies of PW-2, Shri Sohan Lal and PW-4, Shri Roshan Lal. There are material inconsistencies and contradictions in the statements of PW-2 and PW-4 which falsify the claim set up by the plaintiff. In cross-examination, PW-2 admitted that he appeared as a witness on behalf of the plaintiff in several other cases. He could not disclose how many labourers were working on the spot when the alleged occurrence took place. He could not remember for how may days he worked on the spot for carrying out the construction at the house of plaintiff. He admitted that in his presence, no demarcation was carried out by the revenue authorities and he could not identify what material was allegedly taken by the defendants at the time of alleged occurrence.

36. PW-4 Shri Roshan Lal was projected as the star witness of the plaintiff, as it is the case of the plaintiff that since he had gone to Chandigarh for the treatment of his son, it was PW-4 Roshan Lal who was present on the spot, and the defendant, after assaulting him, damaged the property of the plaintiff. In the cross-examination, PW-4 has admitted that he did not see whether the persons who were on the spot were carrying any '*gainti'* or '*belcha'*. He has admitted that he cannot say who dismantled the wall on the spot. The said admission

on the part of PW-4 demolishes the case of the plaintiff, as the plaintiff has solely relied on this witness, PW-4 Roshan Lal, who as per him was present on the spot. Once, there is a categorical admission on the part of this witness that he could not say who broke the wall, the story projected by the plaintiff falls to the ground.

37. This Court is in agreement with the contention raised by the learned counsel for the respondent that the parties have been in prior litigation. Ext. DX is the copy of the judgment in Civil Suit No. 34-1 of 2013, dated 28.08.2020, titled Nand Lal versus Ram Singh. Ext. DY is the copy of the judgment in Civil Suit No. 192-1 of 2013, dated 16.01.2021, titled Ram Singh versus Nand Lal and the present appeal is the outcome of third suit *inter se* the parties.

38. The plaintiff was required to prove his case beyond reasonable doubt by establishing it through cogent, oral and documentary evidence placed on record for the grant of decree of damages.

39. As far as the testimony of PW-3 Sohan Singh Patial is concerned, though he stated that he inspected the damaged portion and assessed the alleged damages, but the record reveals that the report prepared by him was not proved in accordance with law.

40. The primary duty of the plaintiff was to demonstrate that the wall alleged to have been broken was situated over the suit land owned and possessed by him. In the absence of any material placed

on record, especially, a valid demarcation report, it cannot be ascertained whether the alleged occurrence took place on the land owned by the plaintiff or somewhere else. Being the plaintiff, the initial onus was upon him to prove his case and in the absence of discharging that burden, an adverse inference is required to be drawn against him. There are concurrent findings of fact returned by the learned Courts below and this Court finds no merit in the contention raised by the learned counsel for the appellant that the said findings are perverse or illegal.

41. The Hon'ble Apex Court has repeatedly held that the scope of interference by the High Courts especially while exercising power under Section 100 of the Code of Civil Procedure is very limited. The High Courts will not interfere in concurrent findings of fact until and unless the findings as returned by the Courts below are perverse or without any evidence.

42. In the present case, there are concurrent findings of fact rendered by the learned Courts below and the scope of interference in the same is very narrow and limited. The Hon'ble Apex Court has held in its various decisions that the High Court cannot re-appreciate the evidence to substitute its own view for a plausible finding of fact arrived at by the first appellate court.

43. Reference in this regard is made to the judgment of the Hon'ble Apex Court in ***Hero Vinoth (minor)*** vs. ***Seshammal, (2006) 5 SCC 545,*** wherein it has been held as under:

> *"18. It has been noted time and again that without insisting for the statement of such a substantial question of law in the memorandum of appeal and formulating the same at the time of admission, the High Courts have been issuing notices and generally deciding the second appeals without adhering to the procedure prescribed under Section 100 of the CPC. It has further been found in a number of cases that no efforts are made to distinguish between a question of law and a substantial question of law. In exercise of the powers under this section in several cases, the findings of fact of the first appellate court are found to have been disturbed. It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation. Being a substantive statutory right, it has to be regulated in accordance with law in force at the relevant time. The conditions mentioned in the section must be strictly fulfilled before a second appeal can be maintained and no court has the power to add or to enlarge those grounds. The second appeal cannot be decided on merely equitable grounds. The concurrent findings of facts will not be disturbed by the High Court in exercise of the powers under this section. Further, a substantial question of law has to be distinguished from a substantial question of fact. This Court in Sir Chunilal V. Mehta and Sons Ltd. v. Century Spg. & Mfg. Co. Ltd. (AIR 1962 SC 1314) held that : "The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the*

question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.

" 19. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences of fact are possible, one drawn by the lower appellate court will not be interfered by the High Court in second appeal. Adopting any other approach is not permissible. The High Court will, however, interfere where it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at by ignoring material evidence.

20. to 22 xx xxxxxx

23. To be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law "involving in the case" there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes

to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis."

44. Similarly, the Hon'ble Supreme Court in ***Annamalai*** vs. ***Vasanthi, 2025 INSC 1267***, has held as follows: -

"16. Whether D-1 and D-2 were able to discharge the aforesaid burden is a question of fact which had to be determined by a court of fact after appreciating the evidence available on record. Under CPC, a first appellate court is the final court of fact. No doubt, a second appellate court exercising power(s) under Section 100 CPC can interfere with a finding of fact on limited grounds, such as, (a) where the finding is based on inadmissible evidence; (b) where it is in ignorance of relevant admissible evidence; (c) where it is based on misreading of evidence; and (d) where it is perverse. But that is not the case here.

17. In the case on hand, the first appellate court, in paragraph 29 of its judgment, accepted the endorsement (Exb. A-2) made on the back of a registered document (Exb. A-1) after considering the oral evidence led by the plaintiff appellant and the circumstance that signature(s)/thumbmark of D-1 and D-2 were not disputed, though claimed as one obtained on a blank paper. The reasoning of the first appellate court in paragraph 29 of its judgment was not addressed by the High Court. In fact, the High Court, in one line, on a flimsy defense of use of a signed blank paper, observed that genuineness of Exb. A-2 is not proved. In our view, the High Court fell in error here. While exercising powers under Section 100 CPC, it ought not to have interfered with the finding of fact returned by the first appellate court on this aspect; more so, when the first appellate court

> *had drawn its conclusion after appreciating the evidence available on record as also the circumstance that signature(s)/thumbmark(s) appearing on the document (Exb.A2) were not disputed. Otherwise also, while disturbing the finding of the first appellate court, the High Court did not hold that the finding returned by the first appellate court is based on a misreading of evidence, or is in ignorance of relevant evidence, or is perverse. Thus, there existed no occasion for the High Court, exercising power under Section 100 CPC, to interfere with the finding of the first appellate court regarding payment of additional Rs. 1,95,000 to D-1 and D-2 over and above the sale consideration fixed for the transaction.*
>
> *18. Once the finding regarding payment of additional sum of Rs.1,95,000 to D-1 and D-2 recorded by the first appellate court is sustained, there appears no logical reason to hold that the plaintiff (Annamalai) was not ready and willing to perform its part under the contract particularly when Rs. 4,70,000, out of total consideration of Rs. 4,80,000, was already paid and, over and above that, additional sum of Rs.1,95,000 was paid in lieu of demand made by D-1 & D-2. This we say so, because an opinion regarding plaintiff's readiness and willingness to perform its part under the contract is to be formed on the entirety of proven facts and circumstances of a case including conduct of the parties. The test is that the person claiming performance must satisfy conscience of the court that he has treated the contract subsisting with preparedness to fulfill his obligation and accept performance when the time for performance arrives."*

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

46. Both the Courts below have rightly appreciated the point in controversy after considering the oral as well as documentary

evidence placed on record. The substantial question of law is answered accordingly.

47. 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

28th October, 2026.
(vt)