IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 526 of 2014
Date of decision: 16.11.2026

Anant Ram ...Appellant.

Versus

Baldev Chand (deceased) through LRs ...Respondents.

Coram:

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

For the appellant : Mr. Arvind Sharma, Senior Advocate with Ms. Kiran Sharma, Advocate.

For the respondents : Mr. Ajay Kumar, Senior Advocate with Mr. Sumit Sood, Advocate.

Romesh Verma, Judge (Oral):

The instant Regular Second Appeal arises out of the judgment and decree passed by the Learned Additional District Judge (I), Una, District Una, H.P., dated 31.07.2014, whereby the appeal filed by the defendant was dismissed and the judgment and decree passed by the Learned Civil Judge (Junior Division), Court No. 2, Una, District Una, H.P., dated 25.02.2013, partly decreeing the suit filed by the plaintiff for possession, came to be affirmed.

2. The facts emerging for the final adjudication of the present appeal are that the plaintiff-respondent filed a suit for possession of site ABCD, shown in red colour, measuring 0-00-16 Sq. Mtrs., being

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

part of the land measuring 0-00-94 Sq. Mtrs., bearing Khewat No. 62 min, Khatauni No. 95 min and Khasra No. 274, as per the Jamabandi for the year 2000-2001, situated in Mohal Rajli Banialia, Mauza Heru, Tehsil Bangana, District Una, H.P.

3. It is the case of the plaintiff that the land measuring 0-00-94 Sq. Mtrs. situated in village Rajli Banialia, Mauza Heru, Tehsil Bangana, is owned by the plaintiff along with his brothers and sisters and the suit has been filed for their benefit. The defendant is the owner of the adjoining land to the south of the suit land and about six months prior to the filing of the suit, at the back of the plaintiff and other co-owners, he encroached upon the land denoted by letters ABCD, shown in red colour in the attached site plan, measuring 0-00-16 Sq. Mtrs., out of Khasra No. 274, and raised construction over the same.

4. As per the plaintiff, the defendant was requested to admit the claim of the plaintiff and deliver vacant possession of the suit land after removing the encroachment and superstructure, but he evaded to do so on one pretext or another. Consequently, the plaintiff instituted the present suit seeking a decree of possession of the suit land measuring 0-00-16 Sq. Mtrs., being part of the land measuring 0-00-94 Sq. Mtrs., bearing Khewat No. 62 min, Khatauni No. 95 min, and Khasra No. 274, as entered in the Jamabandi for the year 2000-2001, situated in Mohal Rajli Banialia, Mauza Heru, Tehsil Bangana, District

Una, by demolition of the superstructure raised thereon, in favour of the plaintiff and against the defendant.

5. The suit came to be resisted by the defendant by filing a written statement, wherein preliminary objections with respect to maintainability, locus standi, cause of action and non-joinder were raised. On merits, all the averments made in the plaint were specifically refuted and denied. As per the case as set up by the defendant, the grandfathers of the plaintiff and the defendant were real brothers who mutually partitioned the land, obtained separate possession and constructed separate abadis in their respective Khasra numbers. After the death of the grandfather, the property was succeeded to by the fathers of the plaintiff and the defendant and the suit land came into his separate possession. As per the defendant, he renovated the abadi about 20 years ago by spending approximately Rs.60,000/-. He contended that the plaintiff has no right, title, interest or locus standi to file the present suit and being devoid of any merit, the same deserves to be rejected.

6. The Learned trial Court, on the basis of the pleadings of the parties, framed the issues on 15.11.2003 in the following manner:

1. Whether plaintiff is entitled to the relief of possession, as prayed? OPP.
2. Whether defendant has encroached upon ABCD part of the suit land, as alleged? OPP.

3. Whether suit of the plaintiff is not maintainable in the present form? OPD.
4. Whether suit of the plaintiff is bad for non-joinder of necessary parties? OPD.
5. Whether plaintiff has no locus standi to file the present suit? OPD.
6. Relief.

7. The Learned trial Court directed the respective parties to adduce evidence in support of their contentions and vide its judgment and decree dated 25.02.2013 the learned Civil Judge (Junior Division), Court No. 2, Una, District Una, H.P., partly decreed the suit filed by the plaintiff-respondent by directing the defendant to hand over vacant possession of 0-00-12 hectares of land in Khasra No. 274, as shown in the report of the Local Commissioner, to the plaintiff after demolishing the structure thereon, while the rest of the claim made by the plaintiff was declined.

8. Feeling dissatisfied, defendant Anant Ram approached the Court of learned Additional District Judge (I), Una, H.P., by filing an appeal under Section 96 of the CPC on 23.03.2013.

9. The learned first Appellate Court, after appreciating the material placed on record, dismissed the appeal filed by the present appellant and affirmed the findings of the learned trial Court.

10. Still feeling aggrieved, the defendant has approached this Court by filing the present Regular Second Appeal.

11. It is contended by Mr. Arvind Sharma, learned Senior Counsel, assisted by Ms. Kiran Sharma, learned counsel for the appellant/defendant, that the impugned judgments and decrees passed by the learned Courts below are erroneous and liable to be quashed and set aside. He submitted that the Courts below have not taken into consideration the entire material placed on record and have wrongly decreed the suit filed by the plaintiff-respondent for possession. He submitted that after accepting the present Regular Second Appeal, the suit filed by the respondent-plaintiff for possession deserves to be rejected.

12. On the other hand, Mr. Ajay Kumar, learned Senior Counsel, assisted by Mr. Sumit Sood, learned counsel for the plaintiff/respondent, defended the impugned judgments and decrees passed by the learned Courts below. He submitted that while exercising jurisdiction under Section 100 of the CPC, this Court will not disturb the concurrent findings of fact returned by the learned Courts below, which are legal, valid and sustainable in the eyes of law.

13. This Court had admitted the appeal on 19.03.2015 on the following substantial question of law:

> Whether on account of misappreciation of the pleadings and misreading of the oral as well as documentary evidence available on record the findings recorded by learned lower appellate Court are erroneous and as such the judgment and decree

impugned in the main appeal being perverse and vitiated is not legally sustainable?

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

15. The plaintiff-respondent primarily based his claim for the grant of a decree of possession on the ground that the defendant/appellant is the owner of the adjoining land to the south of the suit land and about six months prior to filing of the suit, at the back of the plaintiff, he encroached upon the suit land to the extent of 0-00-16 Sq. Mtrs. from the land measuring 0-00-94 Sq. Mtrs., bearing Khasra No. 274 and raised construction over the same. Therefore, the plaintiff instituted the suit for the grant of a decree of possession, stating that the defendant had encroached upon the suit land at his back.

16. The defendant contested the suit by simply denying the claim set up by the plaintiff. All the averments, especially with respect to the encroachment, were denied by the defendant.

17. In order to substantiate his case, the plaintiff placed on record the copy of the site plan, Ext.PW-3/A, which depicts the description of the entire area including the suit land. The copy of the Jamabandi for the year 2000-2001, Ext.P-1, has also been placed on record to establish the title and ownership of the plaintiff.

18. The most important document placed on record to establish and substantiate that the defendant encroached upon the suit land is the copy of the demarcation report, which forms part and parcel of the case file. The said demarcation is dated 04.01.2006 and was conducted in Case No.145/2003. In the said report, it was found that there is an encroachment over the suit land measuring 0-00-12 hectares by the defendant. It has been specifically indicated in the report of the Local Commissioner that the demarcation was accepted by the plaintiff and the defendant and they acknowledged and agreed with the same. It has further been stated that the parties had no objection to the same.

19. Ext. DX is the copy of the compromise signed by the present parties, wherein it has been stated by Anant Ram, the present appellant, that the demarcation was carried out on the spot and that the same is legal, valid and correct. Ext. DX has been signed by Anant Ram, the present appellant-defendant and Shri Baldev Chand, the respondent-plaintiff.

20. These documents clinch the entire controversy at hand and when read in conjunction with the oral evidence led by the parties, clearly establish the case of the plaintiff-respondent. In his statement, the defendant admitted the execution of the document Ext. DX. In his cross-examination, the appellant admitted that the suit land was demarcated and that encroachment was found in the said report,

though he self-stated that the said demarcation is not correct. He admitted that he retired from the HRTC as a Superintendent and that he read documents before appending his signatures. He further admitted that he appended his signatures to the demarcation report after seeing the same.

21. The plaintiff has been able to establish and prove the case of encroachment, particularly through the documentary evidence placed on record, i.e. the copy of the demarcation report and Ext. DX, the compromise duly signed by the present parties. Although the defendant tried to object to the report of the Local Commissioner, interestingly, the defendant did not summon the Local Commissioner to cross-examine him in order to shatter the veracity of the report. The learned Courts below have rightly appreciated the point in controversy.

22. As rightly contended by the learned senior counsel for the respondent, an application came to be filed by the defendant for the amendment of the written statement to incorporate the plea of adverse possession. Once a plea is sought to be taken with respect to adverse possession against the plaintiff, the natural legal corollary is that he admits the plaintiff to be the owner of the suit land. Once, the plaintiff is established to be the owner of the suit land, then on the strength of title, he is entitled to a decree of possession.

23. This Court does not find any perversity or illegality in the judgments and decrees as passed by the learned Courts below and

the concurrent findings of fact returned by the learned Courts below do not call for any interference.

24. 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 should not interfere in the concurrent findings of fact until and unless the findings as returned by the Courts below are perverse or without any evidence.

25. Reference in this regard is made to the judgment of the Hon'ble Apex Court in ***A. Shahul Hameed vs. N. Malligarjuna and others***, ***Special Leave Petition (Civil) No.32390 of 2025,*** wherein it has been held as under:

> *"11. Before adverting to the merits of the case, it would be apposite to briefly reiterate the principles of law governing the power of the High Court under Section 100 CPC. It is a well settled legal position that Section 100 confers jurisdiction on High Court to entertain a second appeal, only when it is satisfied that the case involves a substantial question of law. Re-appreciation of evidence and interference with concurrent findings of fact is impermissible unless such findings are shown to be perverse, based on no evidence, or suffering from material illegality or misreading of evidence. Merely because another possible view may arise from the same material on record would not justify interference under Section 100 CPC.*
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> *11.1. In Kondiba Dagadu Kadam v. Savitribai Sopan Gujar8, this Court has held that if, from a given set of circumstances, two inferences are possible, then the one drawn by the lower appellate Court is binding on the High Court. Relevant extract is reproduced hereunder:*

"4. … In exercise of the powers under this section 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 to or enlarge those grounds. The second appeal cannot be decided on merely equitable grounds. The concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under this section. The substantial question of law has to be distinguished from a substantial question of fact. …

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."

(emphasis supplied)

11.2. This Court in C. Doddanarayana Reddy v. C. Jayarama Reddy9, while placing reliance on Karnataka Board of Wakf v. Anjuman-E-Ismail Madris-Un-Niswan10, held that the scope to interfere with the finding of facts in second appeal is limited and observed as under:

"25. The question as to whether a substantial question of law arises, has been a subject-matter of interpretation by this Court. In the judgment in Karnataka Board of Wakf v. Anjuman-E-Ismail Madris-Un- Niswan [Karnataka Board of Wakf v. Anjuman-E-Ismail Madris-Un- Niswan, (1999) 6 SCC 343] , it was held that findings of the fact could not have been interfered within the second appeal. This Court held as under :

SCC pp. 347-48, paras 12-15) "12. This Court had repeatedly held that the power of the High Court to interfere in second appeal under Section 100 CPC is limited solely to decide a substantial question of law, if at all the same arises in the case. It has deprecated the practice of the High Court routinely interfering in pure findings of fact reached by the courts below without coming to the conclusion that the said finding of fact is either perverse or not based on material on record.

13. In Ramanuja Naidu v. V. Kanniah Naidu [Ramanuja Naidu v. V. Kanniah Naidu, (1996) 3 SCC 392] , this Court held : (SCC p. 393) 'It is now well settled that concurrent findings of fact of trial court and first appellate court cannot be interfered with by the High Court in exercise of its jurisdiction under Section 100 of the Civil Procedure Code. The Single Judge of the High Court totally misconceived his jurisdiction in deciding the second appeal under Section 100 of the Code in the way he did.'

14. In Navaneethammal v. Arjuna Chetty [Navaneethammal v. Arjuna Chetty, (1996) 6 SCC 166] , this Court held : (SCC p. 166) '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 reappreciate the evidence just to replace the findings of the lower courts. … Even assuming that another view is possible on a reappreciation 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.'

15. And again in Taliparamba Education Society v. Moothedath Mallisseri Illath M.N. [Taliparamba

Education Society v. Moothedath Mallisseri Illath M.N., (1997) 4 SCC 484] , this Court held : (SCC p. 486, para 5)

'5. … The High Court was grossly in error in trenching upon the appreciation of evidence under Section 100 CPC and recording reverse finding of fact, which is impermissible."

(emphasis supplied)

"11.4. Recently, this Court in Ramachandra Reddy v. Ramulu Ammal12, through one of us (Sanjay Karol, J) reiterated the principle that the jurisdiction of the High Court to interfere with concurrent findings in second appeal is limited and held as under:

"28. The above conclusion apart, it was also to be demonstrated by the High Court that the reversal of concurrent findings by the courts below was justified. The jurisdiction to interfere in findings where the courts below have been ad idem, is limited and such limitation is well expounded. We may only refer to a few authorities.

29. Dalveer Bhandari, J. in Gurdev Kaur v. Kaki [Gurdev Kaur v. Kaki, (2007) 1 SCC 546] referred to various earlier judgments in the following manner: (SCC pp. 561 & 565-66, paras 55-56, 73 & 81)

"55. This Court again reminded the High Court in HRCEC v. P. Shanmugama [HRCEC v. P. Shanmugama, (2005) 9 SCC 232] that the High Court has no jurisdiction in second appeal to interfere with the finding of facts.

> *56. Again, this Court in State of Kerala v. Mohd. Kunhi [State of Kerala v. Mohd. Kunhi, (2005) 10 SCC 139] has reiterated the same principle that the High Court is not justified in interfering with the concurrent findings of fact. This Court observed that, in doing so, the High Court has gone beyond the scope of Section 100 of the Code of Civil Procedure.*
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> *73. The Judicial Committee of the Privy Council as early as in 1890 stated [Durga Choudhrain v. Jawahir Singh Choudhri, 1890 SCC OnLine PC 10 : (1889-90) 17 IA 122] 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 100CPC 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 100CPC. The judgment of the High Court is clearly against the provisions of Section 100 and in no uncertain terms clearly violates the legislative intention."*
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> *(emphasis supplied)"*

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

27. 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.

28. 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

16th November, 2026.
(vt)