IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 125 of 2025
Date of Decision: 17.11.2026

Virender Tiwari (deceased) through LR ...Appellant.

Versus

Balwant Singh ...Respondent.

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

Whether approved for reporting?[1]

For the appellant: Mr. Ankit Dhiman, Advocate.

For the respondent: Mr. Vinod Chauhan, Advocate.

Romesh Verma, Judge(oral)

The instant Regular Second Appeal arises out of the judgment and decree as passed by the learned Additional District Judge, Paonta Sahib, District Sirmour, H.P., dated 01.04.2025, whereby the appeal filed by the plaintiffs was allowed and the judgment and decree as passed by the learned Civil Judge, Court No. 2, Paonta Sahib, dated 31.10.2019, was reversed, whereby the suit filed by the plaintiffs for the grant of decree of possession was dismissed.

2. The facts, as emerge in the present case, are that the plaintiff-respondent, being the plaintiff, filed a suit seeking

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

decree of possession on the basis of the title of the land comprised in Khasra No. 315/297/7/1, measuring 0-13 bighas, situated at Mauza Muglawala Kartarpur, Tehsil Paonta Sahib. As per the case as set up by the plaintiffs, they are owners in possession of the land comprised in Khasra No. 315/297/7, measuring 2-01 bighas, situated at Mauza Muglawala Kartarpur, Tehsil Paonta Sahib. It was stated by the plaintiffs that the defendant is the owner of the adjoining land, who unauthorizedly encroached upon the part of Khasra No. 315/297/7 in their absence, as they are the permanent residents of Village Surla, Tehsil Nahan.

3. The plaintiffs stated that they immediately filed an application in order to ascertain the extent of the encroachment before the Revenue Authorities, and the demarcation was conducted on 12.06.2014. In the demarcation, it was found that the defendant had encroached over Khasra No. 315/297/7/1, measuring 0-13 bighas, part of Khasra No. 315/297/7. That after obtaining the demarcation, the plaintiffs requested the defendant to admit their claim, however, instead of admitting the claim, he became furious and refused to accede to the request of the plaintiffs. Therefore, under such circumstances, on the basis of

title and on the strength of the demarcation report conducted on 12.06.2014, the plaintiffs sought a decree of possession of the land comprised in Khasra No. 315/297/7/1, measuring 0-13 bighas, situated at Mauza Muglawala Kartarpur, Tehsil Paonta Sahib against the defendant.

4. The said suit, as filed by the plaintiffs, came to be resisted by the defendant, Shri Virender Singh, by raising preliminary objections with respect to maintainability, cause of action, etc. On merits, all the averments as made in the plaint were specifically refuted and denied. As per the defence set up by the defendant, it was denied that the suit land was demarcated on 12.06.2014 in the presence of the defendant. It was stated by the defendant that the Kanungo never summoned/ intimated the defendant at the time of conducting demarcation, therefore, no question arises of any encroachment or vacating the same. The report of the demarcation, if any, which has been conducted by the Field Kanungo, is false and incorrect. Based upon the same, the defendant sought the dismissal of the suit as preferred by the plaintiff-respondent.

5. The plaintiffs filed a replication to the written statement as filed by the defendant and reiterated all the averments as made in the plaint.

6. The learned Trial Court framed the issues in the matter on 06.01.2016 in the following manner:

> "1. Whether the plaintiffs are entitled for the decree of possession of the land comprised in Khasra No.315/297/7/1, as prayed for?..OPP
>
> 2. Whether the suit of the plaintiffs is not maintainable?..OPD
>
> 3. Whether the plaintiffs have no cause of action to file the present suit ?...OPD
>
> 4. Whether the plaintiffs have not approached this court with clean hands?..OPD
>
> 5. 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 31.10.2019, the learned Trial Court dismissed the suit as filed by the plaintiffs.

8. Feeling dissatisfied, the plaintiffs approached the Court of learned Additional District Judge, Paonta Sahib, by filing an appeal under Section 96 of the CPC on 26.12.2019. Learned First Appellate Court, vide its impugned judgment and decree dated 01.04.2025, accepted the appeal as preferred by

the plaintiffs and the suit came to be decreed by passing a decree of possession on the basis of the title of the land comprised in Khasra No. 315/297/7/1, measuring 0-13 bighas, situated at Mauza Muglawala Kartarpur, Tehsil Paonta Sahib, District Sirmour, H.P., with costs, relying on the demarcation report dated 10.04.2018.

9. Feeling aggrieved, the defendant has approached this Court by filing the instant Regular Second Appeal and has invoked the provisions of Section 100 of the CPC.

10. It is contended by Mr. Ankit Dhiman, learned Counsel for the appellant, that the impugned judgment as passed by the First Appellate Court is erroneous and liable to be quashed and set aside. He submits that the learned First Appellate Court has erred by decreeing the suit as filed by the plaintiffs, though on record no material has been placed to demonstrate that there is any kind of encroachment on the part of the defendant. He would submit that the learned First Appellate Court has wrongly relied upon the demarcation report dated 10.04.2018 submitted by the Naib Tehsildar, Paonta Sahib, which deserves to be quashed and set aside. Lastly, he would submit that after

accepting the present appeal, the suit as filed by the respondent-plaintiff deserves to be dismissed.

11. On the other hand, Mr. Vinod Chauhan, learned Counsel for the respondent, has defended the impugned judgment by submitting that this Court, while exercising the power under Section 100 of the CPC, will not interfere with the well-reasoned judgment as passed by the learned First Appellate Court, as the said Court has taken into consideration the entire oral as well as documentary evidence placed on record and, in conjunction with the law as laid down by the Hon'ble Apex Court, has rightly decreed the suit as filed by the plaintiffs.

12. This Court on 31.10.2025 had admitted the appeal on the following substantial questions of law:

> *"Whether the learned First Appellate Court committed a substantial error of law in relying upon the demarcation report dated 10.04.2018 despite the admitted non-compliance with the mandatory instructions prescribed in Chapter 1-M of the Punjab High Court Rules & Orders (as applicable in Himachal Pradesh), especially concerning the recording of parties' statements, fixation of pucca points, and triangulation method ?"*

12. I have heard the learned Counsel for the parties and have gone through the record carefully.

13. In the present case, the plaintiff-respondent had approached the trial Court for the grant of decree of possession

on the basis of title with respect to the land comprised in Khasra No. 315/297/7/1, measuring 0-13 bighas, situated at Mauza Muglawala Kartarpur, Tehsil Paonta Sahib, on the strength of the demarcation report which was carried out *inter se* the parties on 12.06.2014. It is the case of the plaintiff that he got conducted the demarcation with the aid of the Revenue Authorities, and in the same, it was found that the defendant had encroached over the land comprised in Khasra No. 315/297/7/1, measuring 0-13 bighas. Therefore, on the basis of the demarcation report which was submitted by the Revenue Authority, the plaintiff sought the decree of possession.

14. The perusal of the written statement as filed by the defendant shows that he has denied the case of the plaintiff in its entirety. The only submission on merits in the written statement is that no demarcation was conducted on 12.06.2014 as the Kanungo never summoned or intimated the defendant about the demarcation, therefore, no question arises of any kind of encroachment or the removal of the same.

15. The plaintiffs, in order to substantiate their case, placed on record the copy of the demarcation report, Ext. PW-3/A, which is dated 12.06.2014. The said demarcation report has

concluded that there is an encroachment of 13 biswas on behalf of the defendant over the suit land.

16. It is an admitted fact, which is fairly conceded by the learned Counsel for the parties, that during the pendency of the suit, an application came to be filed for the appointment of the Local Commissioner, and vide its order dated 20.09.2017, the said application filed under Order 26 Rule 9 of the CPC by the plaintiffs came to be allowed by the learned trial Court, whereby Naib Tehsildar, Paonta Sahib, was appointed as a Local Commissioner with a direction to conduct the demarcation as per the High Court Rules and instructions as issued by the Financial Commissioner from time to time. The report of the Naib Tehsildar, Paonta Sahib, is also part of the record, and the same is dated 10.04.2018. Along with the said report, the statements of the plaintiffs and defendant have also been appended.

17. In the present case, the appellant-defendant has primarily laid challenge to the impugned judgment on the ground that no Local Commissioner could have been appointed by the learned Trial Court and that the Local Commissioner, who was appointed, has not followed the procedure as envisaged and

prescribed in the instructions by the Financial Commissioner State of Himachal Pradesh from time to time.

18. In the present case, the suit was filed by the plaintiffs primarily on the ground that the defendant had encroached over the suit land at their back. The plaintiffs had approached the learned Trial Court on the strength of the demarcation report which was conducted by the Revenue Authority on 12.06.2014. The defendant agitated the suit as filed by the plaintiffs mainly on the ground that neither he was associated in the demarcation nor he was summoned by the Field Kanungo, therefore, there is no question of any encroachment or removal of the same. Then, during the pendency of the suit, the plaintiffs, in order to ascertain the veracity of the factual position on the spot, filed an application under Order 26 Rule 9 of the CPC, and the said application came to be allowed on 20.09.2017.

19. As seen from the record, *prima facie*, the plaintiff has raised a dispute by alleging encroachment on the part of defendant over the suit land. Earlier plaintiff obtained demarcation from the authority which is Ext. PW-3/A part of the record. The defendant has denied the authenticity of the said report on the ground that he was never summoned by the

revenue official. The only method by which the said encroachment could have been ascertained is with the aid of the Local Commissioner. The provisions of **Order 26 Rule 9 of the CPC read as follows:**

> ***"9. Commissions to make local investigations****.— In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:*
>
> *Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules."*

20. Similarly, provisions of Order 26 Rule 10 of the CPC read as follows:

> ***"10. Procedure of Commissioner.—*** *(1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court. (2)* ***Report and depositions to be evidence in suit****.—The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation. (3)* ***Commissioner may be examined in person.****—Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit. 1 [Commissions for scientific investigation, performance of ministerial act and sale of movable property."*

21. The learned Trial Court has rightly allowed the application filed by the plaintiffs on 20.09.2017 in order to

ascertain and verify the spot position, as the plaintiffs were raising the plea of encroachment against the defendant. The only method by which such encroachment can be ascertained is with the aid of the Local Commissioner, that is, the Revenue Officer. In the present case also, Naib Tehsildar, Paonta Sahib, was appointed to demarcate the suit land and to verify the position on the spot, and after associating the parties and with the aid of the Revenue Authorities, the report dated 10.04.2018 was given by the Naib Tehsildar, Paonta Sahib.

22. In the opinion of this Court, the appointment of the Local Commissioner on 20.09.2017 does not suffer from any infirmity, as observed earlier; the only method by which the extent of the encroachment can be ascertained is with the help and aid of the Revenue Authority. The plaintiff has done his best whatever was in his reach to ascertain the extent of encroachment . The copy of demarcation report Ext. PW-3/A placed on record by the plaintiff was contested on the ground that he was not associated by the authorities. Thereafter application came to be filed by plaintiff for the appointment of revenue expert which came to be allowed. The duty of the Court is to find out the truth. The only way to ascertain whether there is

an encroachment is to obtain the report of revenue officer as has been done in the present case. The defendant cannot permitted to drag the plaintiff in uncalled for litigation for perpetuity. The order of the trial Court to appoint the Local Commissioner is legal, valid and sustainable and the same cannot be faulted in any manner.

23. As far as the contention of the learned Counsel for the appellant that the procedure as prescribed by the Financial Commissioner, State of Himachal Pradesh, from time to time has not been followed is concerned, the same is totally false and incorrect. From the perusal of the report which has been submitted by the Local Commissioner and which is part of the record, it has been clearly mentioned that on the spot, the plaintiffs along with Shri Surender Tiwari (DW-1), the Power of Attorney of the defendant, were present. It has come on record, especially in the report of the Local Commissioner, that both the parties were apprised about the location of permanent points which were fixed by the Local Commissioner on the spot. After fixing the permanent points, the same were found to be correct by the respective parties. It has come in the report that both the

parties had acknowledged and admitted the permanent points which were fixed by the Local Commissioner on the spot.

24. As per the report, it has further been stated that defendant Shri Virender Tiwari was given written intimation to remain present on the spot, but despite that, he did not choose to appear before the Local Commissioner. However, his brother and his Power of Attorney, DW-1 Shri Surender Tiwari, and his wife were present on the spot, and they accepted and acknowledged the said report. The demarcation report dated 10.04.2018 categorically states that the defendant has encroached 13 biswas of the land over the suit land which is owned by the plaintiffs.

25. The statements of the parties, which were recorded by the Local Commissioner/Naib Tehsildar, clinches the entire controversy. The perusal of the statement of Shri Surender Tiwari, the power of attorney holder of defendant Sh. Virender Tiwari, whereby he has categorically stated that Naib Tehsildar, Paonta Sahib, had fixed permanent points on the spot, and based upon that, it was found that 13 biswas of the land is in their possession. He has admitted that he is satisfied with the demarcation report. As rightly pointed out by Mr. Vinod

Chauhan, Advocate that once the brother/Power of Attorney of the defendant was duly associated, he accepted and acknowledged the report, and he further acknowledged that they are in possession of 13 biswas of the land, therefore, all the objections which are being raised are an afterthought.

26. As submitted earlier, in the report, the Local Commissioner has mentioned in detail that the procedure as prescribed by the Financial Commissioner, including the fixation of permanent points, was followed by him on the spot, and the said fact was duly accepted by the parties on the spot.

27. To the submission of the learned Counsel for the appellant that since the Local Commissioner/Naib Tehsildar who carried out the demarcation has not entered the witness box, therefore, the said report cannot be relied upon, to his said submission. Mr. Vinod Chauhan, Advocate, has relied upon the judgment of the Hon'ble Apex Court in ***Misrilal Ramratan & others Mansukhlal and others vs. A.S. Shaik Fathimal (dead) by LRs and others***, **1995 Supp (4) SCC 600**, which lays down that it is a well-settled principle of law that the report of the Commissioner is part of the record, therefore, the report cannot be overlooked or rejected on a spacious plea of non-

examination of the Commissioner as a witness, since it is part of the record of the case. The relevant para of the said judgment reads as follows:

> *"3. Shri Sundaravaradan, learned Senior Counsel appearing for the appellants has contended that the approach of the High Court is manifestly illegal. We find no force in the contention. It is now settled law that the report of the Commissioner is part of the record and that therefore the report of the Commissioner cannot be overlooked or rejected on spacious plea of non-examination of the Commissioner as a witness since it is part of the record of the case. We have gone through the report submitted by Shri Sundaravaradan and the High Court is clearly right in its conclusion that the age of the building as per the sanctioned plan of 1928 is 70 years and the building requires demolition. In fact, it is undisputed that the landlord obtained sanction from the Municipal Corporation for demolition of the building. What was lacking thereafter was that he did not obtain sanction for reconstruction. This is one of the grounds for rejecting application for eviction. Undertaking was given that within six months from the date of the construction, he would obtain necessary sanction. Under the circumstances, we find that the High Court is right in reaching the conclusion that the landlord has established the need for demolition of the building for reconstruction as envisaged under Section 14(1)(b) of the Act. The appeals are dismissed. However three months' time is granted to the appellants for vacating the premises with usual undertaking. The undertaking shall be filed within one month from today."*

28. Similarly, he has relied upon the judgment of the Hon'ble Apex Court in ***M.P.Rajya Tilhan Utpadak Sahakari Sangh Maryadit, Pachama, District Sehore & others***, **(2022) 14 SCC 345**, the relevant para whereof same reads as follows:

> *"38. By Act 18 of 2018, Section14A29 has been inserted in the Specific Relief Act, 1963. The provision states that without prejudice to the 28A. Nagarajan v. A. Madhanakumar 1996 SCCOnLine Mad 17 2914A. Power of court to engage experts.—(1) Without prejudice to the generality of the provisions contained in the Code of Civil Procedure, 1908 (5 of 1908), in any suit under this Act, where the court provisions of the Code in any suit under the Act in question where a court considers it necessary to get expert opinion to assess it on a specific issue involved in the suit, it may engage one or more experts and direct to report to it on such issue. The court may secure the expert's attendance for providing evidence, including the production of documents on the issue. The opinion or report of the expert would form part of the record of the suit as is the case with the commissioner's report. With the court's permission, the parties to the suit may examine the expert personally in the open court on any of the matters referred to him or as to his opinion or report or as to the manner in which he has made the inspection."*

29. Taking into consideration the entire oral as well as documentary evidence placed on record, especially the report of the Local Commissioner dated 10.04.2018, and on the basis of the statements which were recorded by the Naib Tehsildar, Paonta Sahib, especially Surender Tiwari, the brother of the present appellant being his Power of Attorney, this Court has come to an inescapable conclusion that the defendant has encroached upon the suit land measuring 13 biswas.

30. The findings as returned by the learned First Appellate Court are legal, valid, and sustainable, and this Court does not see any infirmity or illegality in the same. The Hon'ble Apex Court has

repeatedly held that while exercising the power under Section 100 of the CPC, the High Court will not disturb the findings of the Court below until and unless the judgment passed by the Court below is perverse or based on no evidence.

31. 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 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.

31.1. In ***Kondiba Dagadu Kadam v. Savitribai Sopan Gujar***, ***(1999) 3 SCC 722,*** the Hon'ble Apex 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)

31.2. The Hon'ble Apex Court in ***C. Doddanarayana Reddy v. C. Jayarama Reddy***, ***(2020) 4 SCC 659***, while placing reliance on ***Karnataka Board of Wakf v. Anjuman-E-Ismail Madris-Un-Niswan***, ***(1999) 6 SCC 343,*** held that the scope to interfere with the findings of fact 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-UnNiswan [Karnataka Board of Wakf v. Anjuman-

E-Ismail Madris-UnNiswan, (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 (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)*

31.3. In ***State of Rajasthan v. Shiv Dayal***, ***(2019) 8 SCC 637,*** it was held as under:

> *"15. It is a trite law that in order to record any finding on the facts, the trial court is required to appreciate the entire evidence (oral and documentary) in the light of the pleadings of the parties. Similarly, it is also a trite law that the appellate court also has the jurisdiction to appreciate the evidence de novo while hearing the first appeal and either affirm the finding of the trial court or reverse it. If the appellate court affirms the finding, it is called "concurrent finding of fact" whereas if the finding is reversed, it is called "reversing finding". These expressions are well known in the legal parlance.*
>
> *16. When any concurrent finding of fact is assailed in second appeal, the appellant is entitled to point out that it is bad in law because it was recorded dehors the pleadings or it was based on no evidence or it was based on misreading of material documentary evidence or it was recorded against any provision of law and lastly, the decision is one which no Judge acting judicially could reasonably have reached. (See observation made by learned Judge, Vivian Bose, J., as his Lordship then was a Judge of the Nagpur High Court in Rajeshwar Vishwanath Mamidwar v. Dashrath Narayan Chilwelkar [Rajeshwar Vishwanath Mamidwar v. Dashrath Narayan Chilwelkar, 1942 SCC OnLine MP 26 : AIR 1943 Nag 117] para 43.)"*

31.4. Recently, the Hon'ble Supreme Court in ***Ramachandra Reddy v. Ramulu Ammal***, ***(2025) 8 SCC 788***, 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.*
>
> ***
>
> *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.*
>
> ***
>
> *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." (emphasis supplied)"*

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

33. The substantial question of law, as referred above, is answered accordingly.

34. In view of the observations as made here-in-above, the findings/judgment as passed by the learned First Appellate Court do not call for any interference. Therefore, the same is affirmed. Consequently, the appeal is dismissed.

Pending miscellaneous application(s), if any, shall also stand disposed of.

(Romesh Verma)
Judge

November 17, 2026
(Nisha)