IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RSA No. 81 of 2024.
Decided on :28th April, 2026.

Smt. Krishna Devi ...**Appellant.**

Versus

Smt. Dini ....**Respondent.**

Coram:

The Hon'ble Mr. Romesh Verma, Judge.

Whether approved for reporting?[1]

For the Appellants: Mr. Pawan Gautam, Advocate.

For the Respondent: Mr. Arun Kaushal and Mr. Shayam Sharma, Advocates.

Romesh Verma, Judge (Oral).

The present appeal arises out of the judgment and decree, as passed by learned Additional District Judge, Kullu, District Kullu, H.P. dated 22.06.2023, whereby the appeal filed by the present appellant was dismissed and the judgment and decree, as passed by learned Senior Civil Judge, Lahaul & Spiti at Kullu, District Kullu, H.P., dated 30.07.2021, was affirmed whereby

[1] Whether reporters of the local papers may be allowed to see the judgment?

the suit filed by the respondent/plaintiff for possession by way of revocation of conditional gift deed dated 17.02.2009 was decreed.

2. The brief facts of the case are that the respondent/plaintiff filed a suit for possession by way of revocation of conditional gift deed dated 17.02.2009. As per the averments made in the plaint, the plaintiff was owner in possession of the land measuring 2-13-0 bighas, being 53/106 share of total land measuring 5-6-0 bighas, comprised in Khasra No. 1110, Khata Khatauni No.321/439, as incorporated in the copy of jamabandi for the year 2004-2005, situated in Phati Shat, Kothi Chong, Tehsil and District Kullu, H.P. Since, the plaintiff has no issue and defendant being the daughter of plaintiff's brother assured the plaintiff that she would render whole hearted services to the plaintiff throughout her life, in case she executed a conditional gift deed with respect to the suit land measuring 2-13-0 bigha in her favour.

3. That the plaintiff believing the assurance given by the defendant, out of love and affection and belief had executed a conditional gift deed in favour of defendant on 17.02.2009 before

the Sub Registrar, Kullu on the condition that the defendant shall look after and take care of the plaintiff for rest of her life in lieu of which the plaintiff bestowed the aforesaid suit land as conditional gift in her favour. After execution of conditional gift deed, defendant was got married and thereafter she alongwith her husband started living with the plaintiff. The behaviour of the defendant towards the plaintiff remained affectionate for about 9.10 months, but after that, defendant and her husband started neglecting, misbehaving and maltreating the plaintiff. The plaintiff was verbally and mentally abused by the defendant and her husband and the defendant stopped looking after and taking care of the plaintiff. They used to pressurize the plaintiff to get the remaining land/property transferred in the name of the defendant, either as gift or by way of registered sale deed to which the plaintiff did not accede.

4. The defendant left the house of plaintiff without any rhyme or reason under the sole pretext that the plaintiff transfers the remaining land in her favour, is now residing with her father and is neither taking care nor looking after the plaintiff nor

rendering any sort of services to her, which she was required to do in lieu of land given to her by the plaintiff by way of conditional gift deed. The defendant despite the repeated requests of the plaintiff, has failed to render services and to take care and look after the plaintiff. The defendant after getting the mutation attested in her favour on the basis of conditional gift deed became owner and has created a charge, with a view to make loss to the plaintiff, in favour of proforma defendant on 29.05.2012 and as such the bank has been arrayed as proforma defendant. The suit was filed for possession of the suit land by way of revocation of conditional gift deed dated 17.02.2009 and also mutation No.1422, dated 22.04.2009 sanctioned in favour of defendant on the basis of aforesaid conditional gift deed be also declared null and void.

5. The suit was contested by the defendant by filing written statement raising various preliminary objections with respect of maintainability and estoppel etc. On merits, all the averments made in the plaint were refuted and denied. It was stated in the written statement that defendant No.1 along with her husband are rendering services to the plaintiff. It was the plaintiff

who wanted to give her entire land to defendant No.1. It was stated that plaintiff was never pressurized by her at any point of time to transfer her entire property in favour of defendant No.1 by way of gift because she has already given the remaining entire property by way of Will in favour of defendant No.1 and question of pressurizing for transfer of the land does not arise at all. All other averments as made in the plaint were denied by defendant No.1 and prayed for dismissal of the suit.

6. Defendant No.2/bank filed separate written statement and it was prayed that till the outstanding loan amount is not paid to the bank, the suit of the plaintiff is not maintainable and competent against the said bank/defendant No.2.

7. Learned trial Court on 28.05.2013, framed the following issues:-

> "1. Whether the plaintiff has executed conditional gift deed 17.02.2009 in favour of the defendant No.1, if so, its effect? OPP.
> 2. Whether the plaintiff is entitled for recovery of possession of suit land, as alleged? OPP.
> 3. Whether the suit of the plaintiff is not maintainable? OPD.

4. Whether the suit of the plaintiff is barred by principle of resjudicate? OPD.
5. Whether the plaintiff has no cause of action against the defendant? OPD.
6. Relief."

8. Learned trial Court directed the respective parties to adduce evidence in support of their contentions and finally, vide its judgment and decree dated 30.07.2021, the suit filed by the plaintiff was decreed by passing a decree for possession in favour of the plaintiff and against the defendant for possession of the suit land measuring 2-13-0 bighas being 53/106 share of total land measuring 5-6-0 bighas, comprised in Khasra No. 1110, Khata Khatauni No. 321/439, situated in Phati Shat, Kothi Chong, Tehsil and District Kullu, H.P. by way of revocation of conditional gift deed dated 17.02.2009 and mutation No. 1422, dated 22.04.2009 sanctioned in favour of defendant on the basis of aforesaid conditional gift deed was also declared null and void. Further, the suit land was ordered to be delivered back to the plaintiff free from all encumbrances within three months from the date of passing of the judgment and decree by the learned trial Court.

9. Feeling dissatisfied, the defendant/present appellant preferred an appeal under Section 96 of the CPC before the Court of learned Addl. District Judge, Kullu, District Kullu H.P. on 15.09.2021. Learned first appellate Court vide its judgment dated 22.06.2023 dismissed the appeal preferred by the appellant/defendant.

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

11. With the consent of the parties the appeal is finally heard at the admission stage on the substantial question of law, which reads as under:-

> "1. Whether the findings by both the Courts below are palpably illegal and erroneous on account of concurrent misrepresentation and misconstruction of the pleadings of the parties, as well as oral and documentary evidence on record and the legal preposition of law as applicable to the facts of the case?

12. It is contended by Mr. Pawan Gautam, learned counsel for the appellant/defendant that the judgments and decrees as

passed by the learned Courts below are not sustainable in the eyes of law. He submits that the learned Courts below have not appreciated the oral and documentary evidence on record in right perspective, as a result, great prejudice has been caused to the defendant. He prayed that the suit filed by the plaintiff/respondent be ordered to be dismissed.

13. On the other hand, Mr. Arun Kaushal, learned counsel for the respondent/plaintiff has defended the impugned judgments and decrees passed by the learned Courts below by submitting that there are concurrent findings of fact by courts below. Therefore, no interference is required in the present appeal by invoking the provisions of Section 100 of the CPC. He submits that the learned Courts below have thrashed the entire evidence on record and have rightly passed the decree for possession in favour of the plaintiff/respondent.

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

15. The case of the plaintiff precisely is that she was owner in possession of land measuring 2-13 bigha being 53/106 share of

total land measuring 5-6-0 bigha comprised in Khasra No. 1110 Khata Khatauni No. 321/439 as per jamabandi for the year 2004-05. The plaintiff has come with a stand that she was having no issue and the defendant being the daughter of her brother assured that she would render services to the plaintiff throughout her life. That on account of assurance as given by defendant No.1, out of love and affection, the plaintiff had executed a conditional gift deed on 17.02.2009 before the Sub Registrar Kullu with specific condition that defendant No.1 shall look after and take care of the plaintiff for rest of her life. That in lieu of the same, the plaintiff bestowed the suit land measuring 2-13-0 bigha as conditional gift deed in her favour. It is the case of the plaintiff that after the marriage of defendant No.1, her attitude became hostile and she along with her husband started maltreating the plaintiff and violated the terms and conditions of the conditional gift deed. It is the case of the plaintiff that on account of maltreatment, plaintiff was constrained to file the present suit as per the stipulation which has been specifically incorporated in the gift deed.

16. Copy of the gift deed has been placed on record as Ex.PW1/A. The said gift deed has been duly signed by the plaintiff. There is categorical stipulation in the gift deed that defendant No.1 shall maintain and look after the plaintiff. Further, it has been stipulated that in case defendant No.1 does not maintain the plaintiff, in that event, the plaintiff would be entitled to get back the land which was given to defendant No.1 by means of Ex.PW1/A. The perusal of gift deed reveals that conditional gift deed which was executed in favour of defendant No.1 carries a stipulation that in case defendant No.1 fails to maintain the plaintiff, in that event, the plaintiff would be at liberty to get back the land which was given to defendant No.1.

17. In order to prove her case, the plaintiff has entered into the witness box as PW-5 and tendered into evidence her affidavit Ex.PW4/A. In deposition, she has stated that she was owner in possession of the suit land and since she has no issue and the defendant being the daughter of her brother, assured her that she would render whole hearted services to her throughout her life, in case she executed a conditional gift deed with respect

to land measuring 2-13-0 bigha being half share of aforesaid land measuring 5-6-0 bigha in her favour After the execution of conditional gift deed, defendant No.1 was got married and thereafter she along with her husband started living with the plaintiff. Everything was normal till 9 to 10 months and thereafter, they started neglecting, misbehaving and maltreating her. She was verbally and mentally abused by defendant No.1 and her husband and defendant No.1 stopped to look after her. They used to pressurize the plaintiff to get the remaining land/property transferred in the name of defendant No.1, either as gift or by way of execution of registered sale deed, to which the plaintiff did not accede to. That the defendant neither tool care nor look after the plaintiff which she was required to do so in lieu of the land given to her by the plaintiff by way of conditional gift deed. Therefore, the suit filed by her should be decreed. In the cross-examination as conducted by the defendants, she failed to extract anything from the deposition as made by the plaintiff. Plaintiff has denied to the suggestions which have been put to her by the defendant in cross-examination.

18. Sh. Sanal Kumar has stepped into the witness box as PW-1. He has produced the record of gift deed and the same was exhibited as Ex.PW1/A. Smt. Shakuntla has stepped into the witness box as PW-2. She has deposed that for the last 10 years she is residing with the plaintiff and that she is working in the orchard of the plaintiff. That the plaintiff is paying a sum of Rs.6,000/- to her in lieu of the services rendered by her towards plaintiff. She has stated that for the last more than 10 years except the plaintiff, she has not seen any other person working in the orchard. The said witness was cross-examined but nothing could be extracted from her testimony.

19. PW-3 Shri Likhit Ram has stated that he is doing the work of pruning in the orchard of the plaintiff. He has stated that for the last five years he is is doing the work of pruning in the orchard of the plaintiff. PW-4 Ram Nath has stated that he is working as mason and he is also doing the work of cutting of the apple trees. He is working in the apple orchard of the plaintiff for the last more than five years and it is only the plaintiff who is working in the same.

20. When the afore testimonies of the plaintiff's witnesses and statement of the plaintiff are read in conjunction with the copy of gift deed, Ex.PW1/A, reveal that conditional gift deed was executed by the plaintiff in favour of defendant No.1, being the daughter of brother of the plaintiff and she has specifically stated that defendant No.1 and her husband stopped maintaining and looking after her and they started maltreating and ill-treating her. Therefore, she has filed the instant suit for possession by way of revocation of conditional gift deed dated 17.02.2009.

21. Section 126 of the Transfer of Property Act reads as follow:-

> **"126. When gift may be suspended or revoked**.—The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.
>
> A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.
>
> Save as aforesaid, a gift cannot be revoked.

> Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice."

22. A perusal of the aforesaid section reveals that a gift may be revoked in any of the cases in which, if it were a contract, it might be rescinded. Therefore, the present plaintiff has filed the present suit for possession by way of revocation of conditional gift deed since the terms and conditions of the gift deed which were stipulated therein were violated by the defendant No.1 by not maintaining the plaintiff properly. In Ex.PW1/A, there is recital that in case defendant No.1 fails to maintain the plaintiff properly, the plaintiff will be at liberty to take the land given to defendant No.1 back from her. Persual of Ex.DB shows that a comprise was effected between the parties before the Gram Panchayat. In the said document, Ex.DB, there is recital that Krishna Devi and her husband Amit are not looking after and maintaining the plaintiff. It has been stated that there is tension between the husband of the plaintiff and husband of defendant No.1 and that henceforth the defendant and her husband will not look after the plaintiff and they shall not intimidate the plaintiff in any manner. This also corroborate the case of the plaintiff which shows that after

execution of the conditional gift deed, the defendant is not maintaining and looking after the plaintiff properly.

23. Both the learned courts below have concurrently decided the case after appreciating the oral and documentary evidence placed on record and came to the conclusion that the defendant failed to maintain the plaintiff. Therefore, she is entitled to a decree of possession of the suit land by way of revocation of conditional gift deed dated 17.02.2009.

24. The Hon'ble Supreme Court while dealing with scope of interference under Section 100 in ***Hero Vinoth (minor) vs. Seshammal, (2006) 5 SCC 545*** has held as under:

> *"18. It has been noted time and again that without insisting for the statement of such a substantial question of law in the memorandum of appeal and formulating the same at the time of admission, the High Courts have been issuing notices and generally deciding the second appeals without adhering to the procedure prescribed under Section 100 of the CPC. It has further been found in a number of cases that no efforts are made to distinguish between a question of law and a substantial question of law. In exercise of the powers under this section in several cases, the findings of fact of the first appellate court are found to have been disturbed. It has to be kept in mind that the*

right of appeal is neither a natural nor an inherent right attached to the litigation. Being a substantive statutory right, it has to be regulated in accordance with law in force at the relevant time. The conditions mentioned in the section must be strictly fulfilled before a second appeal can be maintained and no court has the power to add or to enlarge those grounds. The second appeal cannot be decided on merely equitable grounds. The concurrent findings of facts will not be disturbed by the High Court in exercise of the powers under this section. Further, a substantial question of law has to be distinguished from a substantial question of fact. This Court in Sir Chunilal V. Mehta and Sons Ltd. v. Century Spg. & Mfg. Co. Ltd. (AIR 1962 SC 1314) held that :

"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.

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

20. to 22 xx xx xx xx

23. To be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law "involving in the case" there must be first a foundation for it laid in the pleadings and the question should emerge from the

sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis."

25. 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 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 16 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."*

26. Both the learned Courts below have rightly determined the point in controversy concurrently and there is no infirmity or illegality in the impugned judgments and decrees passed by the learned Courts below.

27. The substantial question of law is answered accordingly.

28. In view of above discussions, the present appeal being devoid of any merit is dismissed. Pending applications, if any, also stand disposed of.

(Romesh Verma)
Judge

28th April, 2026.
(jai)