

**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA**

**RSA No. 56/2008 a/w
C.O. No. 252/2008**

Reserved on: 30.05.2026

Decided on: 17.06.2026

Mandir Thor (Matha Thor)Appellant/Defendant

Versus

Ramesh Kumar &ors.Respondents/Cross-objectors

Coram:

The Hon'ble Mr. Justice RomeshVerma, Judge.

Whether approved for reporting?¹

For the Appellant: Mr. Neeraj Gupta, Sr. Advocate with Mr. PranjaiMunjal, Advocate.

For the Respondents: Mr. KanwarBhupender Singh, Advocate.

RomeshVerma, Judge

The present appeal arises out of the judgment and decree, dated 03.11.2007, as passed by the learned Additional District Judge, Sirmaur, District at Nahan, H.P., whereby the appeal filed by the present respondents/plaintiffsagainst the judgment and decree, dated 31.10.1996, as passed by the

¹Whether reporters of the local papers may be allowed to see the judgment? Yes.



learned Sub Judge, Rajgarh, rejecting their plaint, has been partly accepted.

2. Brief facts of the case are that the respondents/plaintiffs filed civil suit for declaration and injunction against the appellant/defendant i.e. Mandir, Thor Math Thor) before the learned Sub Judge, Rajgarh, District Sirmour, H.P. on 23.9.1992. As per averments, as made in the plaint, the land comprised in Khata Khatauni No. 3/28 min, Khasra No. 222, measuring 21-15 Bighas, situated in Village Thor Kolan, Tehsil Rajgarh, District Sirmaur, H.P. as per jamabandi for the year 1989-90, is managed by the Secretary of the Mandir Committee, constituted for the welfare of the defendant/appellant. The plaintiffs/respondents through their ancestors have been in possession of the suit land for the last more than 40 years, except plaintiff No.2, who is son of plaintiff No.1 and helps him in cultivation. Mahant AkhandaNandGiriShriShri 1008 created tenancy of the suit land 40 years ago in favour of plaintiff No.1, Matha Ram, to the extent of 6 Bighas, BalBahadur, father of plaintiff No.3, to the extent of 9 bighas and plaintiff No.4, Sunder Singh, son of Prem Singh, to the extent of 6-15 Bighas.

3. It was averred that the aforesaid tenancy was created about 40 years ago, whereby it was settled that the



tenants shall pay to the Mandir $\frac{1}{2}$ share of the crop as six monthly rent and since then, the defendant had been receiving the “gallabatayee” to the extent of its share. After substitution of the aforesaid Mahant by Shri Vishnu GiriShriShri 1008, $\frac{1}{2}$ share of the every crop as a rent was paid to him by the plaintiffs including their respective forefathers from time to time until the time when a Mandir committee was constituted to look after the affairs of the Mandir.

4. It was further averred that the revenue entries have not been properly maintained by the revenue officials. The defendant, through its agents/servants, issued some receipts of rent to the plaintiffs as after the constitution of the Mandir Committee, its Secretary asked to pay the rent in cash after selling respective shares of the defendantqua the crops. The plaintiffs, who are illiterate, mentioned contrary facts, therefore, it was prayed that decree be passed in favour of the plaintiffs by declaring that the plaintiffs are tenants under the defendant on payment of $\frac{1}{2}$ per crop rent i.e. plaintiff No.1 Matha Ram to the extent of 6 Bighas, plaintiff No.3 Gaje Singh to the extent of 9 Bighas, plaintiff No.4 Sunder Singh to the extent of 6-15 Bighas over the suit land and the plaintiffs have become owners in possession of the suit land by virtue of H.P. Tenancy and Land Reforms Act, 1972. The plaintiffs also sought



consequential decree for permanent injunction restraining the defendant either himself, through its agents, servants, relatives or friends from dispossessing them or creating any right, title or interest over the suit land.

5. The suit, as instituted by the plaintiffs, was contested by the defendant by filing written statement, wherein preliminary objections qua maintainability, non-joinder of necessary parties, jurisdiction were raised. On merits, it was averred that the land in dispute was given on auction (on contract) annual contract to plaintiffs No. 2 to 4. One portion of the land was given to plaintiff No.2 Balak Ram on annual contract at the rate of Rs.400/- in the year 1983, but he failed to pay the contract money for the year 1992 and balance of Rs.400/- for the year 1992 is due from him. Another portion of the land at contract rate of Rs.800/- per year was given to plaintiff No.3 in the year 1983 for the first time and he deposited the contract money in the year 1990 and rest of the money for the years 1991 and 1992 i.e. Rs.1600/- is due from plaintiff No.3. Similarly, another portion of land was given on contract @ Rs.300/- per year to plaintiff No.4 Sunder Singh, but till date, a sum of Rs.1350/- is due from him, which he failed to pay the same. It was further averred that plaintiffs No. 2 to 4 remained in possession of the suit land since 1983



on the basis of the contract by auction and plaintiff No.1 never remained in the possession of the suit land. All the averments as made in the plaint were refuted and denied.

6. The learned trial court on 24.09.1993 framed the following issues:-

- 1) Whether the plaintiff No.1 is tenant under the defendant to the extent of 6 bighas while the plaintiff No.3 is tenant to the extent of 9 bighas and the plaintiff No.4 is tenant to the extent of 6-15 bighas under the defendant and as such have become owners of the same by virtue of H.P. Tenancy and Land Reforms Act as alleged? ...OPP.
- 2) Whether the defendant is interfering with the possession of the plaintiffs over the land in suit as alleged?..OPP.
- 3) Whether the suit is not maintainable in the present form? ..OPD.
- 4) Whether the suit is bad for non-joinder of necessary party?..OPD.
- 5) Whether this court has no jurisdiction to try the suit? ...OPD.
- 6) Whether the land in suit was given to the plaintiffs No.2 to 4 on annual contract as alleged?..OPD.
- 7) Relief.

7. The learned trial court directed the parties to adduce evidence in support of their contentions to corroborate their respective case and ultimately, the learned trial court vide



its judgment and decree dated 31.10.1996, rejected the plaint of the plaintiffs after holding that the court lacks jurisdiction to hear and determine the suit and cognizance of the Court is barred by H.P. Tenancy and Land Reforms Act.

8. The plaintiffs/respondents, feeling dissatisfied by the judgment and decree, dated 31.10.1996, as passed by the learned trial court, preferred an appeal before the learned first Appellate Court, who vide judgment dated 02.06.1998 too dismissed the appeal and affirmed findings of the learned trial court that the civil court does not have jurisdiction to try the suit.

9. Thereafter, the plaintiffs/respondents approached this Court by way of RSA No. 221/1999, which came to be accepted vide judgment dated 01.06.2007 by holding that the Civil Court has jurisdiction to entertain the suit in question and accordingly the matter was remanded to the Court of learned District Judge for decision afresh on the points which were raised before that Court dealing with the findings of the learned trial Court on all the other issues.

10. After the aforesaid remand of appeal, the learned first appellate court vide its judgment and decree dated 03.11.2007 partly accepted the appeal, whereby the suit of the plaintiffs was decreed only for injunction restraining the



defendant from interfering in the possession of the plaintiffs over the suit land or to dispossess them from the suit land except by due process of law.

11. Feeling aggrieved by the aforesaid judgment and decree, dated 03.11.2007, the defendant/appellant has preferred the instant regular second appeal before this Court, which came to be admitted vide order dated 26.06.2008 on the following substantial question of law:-

Whether a person, who is licensee, can be granted an injunction against the licensor after the period, for which, the license has been granted, comes to an end?

12. Against judgment and decree, dated 01.11.2007, as passed by the learned first appellate Court, the plaintiffs/respondents have also filed cross-objections, which though were formally admitted on the same date i.e. 26.06.2008, however no substantial question of law was formulated in the cross-objections, therefore, following substantial question of law was framed by this Court vide order dated 30.05.2026:-

Whether the findings recorded by learned Additional District Judge, Sirmour at Nahan are vitiated for failure to consider and appreciate the pleadings of



the parties and oral as well as documentary evidence on record?

13. It is contended by Mr. Neeraj Gupta, learned Senior Advocate, duly assisted by Mr. Pranjali Munjal, Advocate, appearing for the defendant/appellant that the impugned judgment and decree, as passed by the learned first appellate Court, is illegal, wrong and liable to be quashed and set aside. He has submitted that the decree of injunction has been wrongly passed in favour of the plaintiffs and against the defendant/appellant. He has further submitted that after accepting the instant appeal, suit, as filed by the plaintiffs/cross-objectors, deserves to be dismissed in toto.

14. On the other hand, Mr. Kanwar Bhupinder Singh, learned counsel appearing for the respondents, has submitted that though the learned first appellate Court has granted decree for injunction, but the plaintiffs are also entitled to decree of declaration to the effect that the plaintiffs were inducted as tenants by the defendant/appellant and by operation of law, they have now become owners in possession of the suit land. He has further submitted that after accepting the cross-objections, as filed in the instant appeal, the suit, as preferred by the plaintiffs/cross-objections, deserves to be decreed as a whole.



15. I have heard the learned counsel for the parties at length and have also scanned the record carefully.

16. As noticed above, the respondents/plaintiffs filed civil suit for grant of decree of declaration and injunction on the ground that they were inducted as tenants by Mahant AkhandaNandGiriShriShri 1008 and tenancy was created qua suit land about 40 years ago in favour of Matha Ram, plaintiff No.1 to the extent of 6 Bighas, BalBahadur, father of plaintiff No.3 to the extent of 9 bighas, Sunder Singh, father of Prem Singh, to the extent of 6-15 Bighas. As per the terms and conditions of the tenancy, it was agreed upon inter se the parties that the plaintiffs shall pay $\frac{1}{2}$ share of the crop as six monthly rent to the Mandir. After substitution of the aforesaid Mahant by Shri Vishnu GiriShriShri 1008, $\frac{1}{2}$ share of the every crop as a rent was paid to him by the plaintiffs including their respective forefathers till the time when a Mandir committee was constituted. According to the plaintiffs, they are illiterate persons and receipts had been furnished in order to oust them from the suit land. Revenue entries are not in accordance with factual position of the suit land, therefore, decree for declaration and injunction was sought that they are owners in possession of the suit land by operation of law under the provisions of H.P. Tenancy and Land Reforms Act, 1972 and



they have acquired ownership over the suit land. Further they sought injunction restraining the defendant either himself, through its agents, servants, relatives or friends from dispossessing them or creating any right, title or interest over the suit land other than the plaintiffs by means of sale, auction or any other mode affecting the rights of the plaintiffs.

17. The defendants in its written statement has not categorically denied the possession of the plaintiffs over the suit land. The only defence, which has come forward on its behalf is that the suit land was given to the plaintiffs on annual contract basis. It is the case of the defendant that portion of the suit land was given to Balak Ram on annual contract at the rate of Rs.400/- in the year 1983, to plaintiff No.3 at annual contract rate of Rs.800/- in the year 1983, to plaintiff No.4 Sunder Singh on contract @ Rs.300/- per year.

18. The precise defence, as set up by the defendant, is that plaintiffs No. 2 to 4 were in possession of the suit land since 1983 on the basis of the contract, which was given to them on the basis of auction. There is no specific denial with respect to the fact that the plaintiffs are not in possession of the suit land.

19. Written statement, as filed by the defendants, when read in conjunction with oral testimony of DW1, Megh Ram,



Tehsildar, demonstrates that the suit land was given to the plaintiffs on the basis of contract in the year 1983 and the said land is still with the plaintiffs on the basis of annual contract. There is no denial on the part of the defendant that the plaintiffs are not in possession of the suit land and there is no specific admission on the part of DW1 that defendant took possession of the suit land from the plaintiffs.

20. When testimony of DW1 is read alongwith statements of PW1, Gaje Singh, it would be noticed that PW1 has categorically stated in his statement that the suit land is measuring 21-15 Bighas and the same is in possession of the plaintiffs. He stated that the land measuring 9 bighas is in his possession, whereas Sunder Singh and Matha Ram are in possession of land measuring 6-15 Bighas and 6 Bigha respectively.

21. PW2 Mansha Ram, deposed in his testimony, that the plaintiffs are cultivating the suit land for the last more than 40 years. The plaintiffs have raised construction of houses over the same. He stated that Mahant AkhandanandGiri about 40 years ago rented the suit premises on $\frac{1}{2}$ crop annual rent to be paid to defendant.

22. PW3 Khajan Singh has also stated in his deposition that for the last more than 40 years, the plaintiffs are



cultivating the suit land. He stated that on the basis of the rent, Temple Committee inducted the plaintiffs as tenants and $\frac{1}{2}$ crop annual rent is being paid by the plaintiffs to the defendant. He further stated that the plaintiffs have raised construction of their houses over the suit land.

23. PW4 Matha Ram, deposed that the suit land was rented to the plaintiffs by Mahant AkhandanandGiri about 40-42 years ago and since then, the predecessor-in-interests of the plaintiffs and thereafter the plaintiffs are in possession of the suit land.

24. PW5 Sunder Singh, has also deposed that the suit land to extent of 6 Bighas is possessed by Matha Ram. He stated that he is having 6-15 Bighas' land and Gaje is having 9 Bighas. They are cultivating the suit land for the last more than 40 years on the basis of the tenancy, which was created by the defendant.

25. In order to corroborate possession of the plaintiffs over the suit land, HariDutt, Patwari, Patwar Circle,Dimbar,was examined as PW6. He stated that since June 1994, he is working as Patwari in Patwar Circle. He stated that there is possession of Gaje Singh, Sunder Singh and Balak Ramon the suit land. After obtaining demarcation report, he prepared tatima, Ext. PW6/B. He stated that tatima, as per the spot



position, is correct. He deposed that after conducting demarcation, on the spot, Gaje Singh was found to be in possession of suit land to the extent of 8-13 Bighas, Sunder Singh to the extent of 8-5 Bighas and Balak Ram to the extent of 4-17 Bighas.

26. Perusal of the oral evidence reveals that in the cross-examination, the defendant has not tried to demolish the case of the plaintiffs that they are in possession of the suit land. Averments as contained in written statement as well as statement of DW1 Megh Ram clearly show that the plaintiffs are in possession of the suit land. The said fact has been corroborated by PW6HariDutt, Patwari, who prepared tatima, Ext. PW6/B and as per copy of tatima, the plaintiffs are in possession of the suit land. Interestingly, PW6 has not been cross-examined by the defendant for the reasons best known to it.

27. The Hon'ble Supreme Court has held that in case party is not cross-examined, in that event, veracity of the examination-in-chief is very low or disregarded, as the opposite party lost the opportunity to challenge the witness's credibility. Therefore, the learned first appellate Court has rightly come to the conclusion that the plaintiffs being in possession are entitled for injunction.



28. In **Gopal Saran vs. Satyanarayan, AIR 9 SCC 1141**, it was held that if party is not subjecting to cross-examination in spite of order of Court, it is not safe to rely on examination-in-chief. It would be apt to refer to para 5 of the aforesaid judgment, which reads as under:-

“5. On the basis of the aforesaid, it was contended that it was the definite case of the defendant in Examination-in-chief, that the board belonged to him and that the defendant was carrying on his own business and that there was no dispute as to the same by the plaintiff. It may be mentioned that the plaintiff had not subjected himself to cross examination in spite of the order of the Court after the remand, therefore, it would not be safe to rely on the examination- in-chief recorded which was not subjected to cross-examination before the remand was made. If that is so, it will appear that there is no evidence of the plaintiff in respect of allegations in the plaint. This position appears established from the facts on record. When the plaintiff appeared for evidence in rebuttal he could have been cross-examined on these points. It was submitted that in rebuttal the plaintiff had stated only with regard to the default in payment of rent but the Plaintiff had not chosen to support his plaint case, before the defendant went to the witness box. There was no question of cross-examining the plaintiff travelling beyond the evidence of the plaintiff given in examination-in-chief and thereby giving an opportunity to make out a case in cross examination. It, therefore, appears from the pleadings and the evidence that the respondent did not



make out any case of the appellant parting with possession by putting up the hoarding. In examination-in-chief also he did not make out such a case and on the contrary his case was that it was that it was the defendant-appellant who had put up the hoarding. The plaintiff did not allege that the defendant-appellant was not carrying on also advertising business. It was submitted on behalf of the appellant that having refused to submit to cross examination the plaintiff has made the evidence in examination-in-chief non est. It was the case of the defendant that he was carrying on the business of advertisement by putting up the hoardings of different parties. The board was made by him, paintings and writings were also done by him and for putting the hoarding the charged from his customers. Therefore, it appears to us that there are no clear findings that anybody was given lease or anybody was given the right to put up the hoarding and there was parting of possession in favour of anyone else. It was, however, argued that even if the appellant had put the advertisement board hoarding he was earning a huge amount by the same and this was a factor which would indicate that there was parting of possession by him. It was, however, submitted on behalf of the appellant that when the shop had been let out to the defendant appellant for carrying on business it was the right of the defendant appellant to carry on the business. It was legally permissible to use the said shop room and also use the roof thereof and earn as much as could be done and as such it is not parting with possession.”



29. In **Vidhyadhar vs. Mankikrao, AIR 1999 SC**

1441, the Hon'ble Supreme Court has held as under:-

"16. Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in Sardar Gurbakhsh Singh v. Gurdial Singh and Anr. . This was followed by the Lahore High Court in Kirpa Singh v. Ajaipal Singh and Ors. AIR (1930) Lahore 1 and the Bombay High Court in Martand Pandharinath Chaudhari v. RadhabaiKrishnaraoDeshmukh AIR (1931) Bombay 97. The Madhya Pradesh High Court in GullaKharagjit Carpenter v. Narsingh Nandkishore Rawat also followed the Privy Council decision in Sardar Gurbakhsh Singh's case (supra). The Allahabad High Court in Arjun Singh v. VirenderNath and Anr. held that if a party abstains from entering the witness box, it would give rise to an inference adverse against him. Similarly, a Division Bench of the Punjab & Haryana High Court in BhagwanDass v. Bhishan Chand and Ors., drew a presumption under Section 114 of the Evidence Act against a party who did not enter into the witness box."

30. It is contended by the learned senior counsel that the suit land was given to the plaintiffs on annual contract and since the plaintiffs failed to pay outstanding amount to the defendant and once a license has come to an end, therefore, the



possession of the plaintiffs is unauthorized and they cannot be protected by passing a decree of injunction.

31. In the present case, the possession of the suit land was given to the plaintiffs by rightful owner and now they being in peaceful and settled possession over the same cannot be dispossessed save and except by due course of law. The plaintiffs were given possession on the basis of the annual contract and the said possession is not under dispute.

32. It is also not in dispute that the true/rightful owner gave the possession to the plaintiffs on contractual basis. The plaintiffs are within their right to protect their possession till the time they are evicted by due process of law. The findings as returned by the learned first appellate court by granting the decree of injunction do not suffer from any infirmity and illegality. The substantial question of law as framed in the regular second appeal is answered accordingly.

33. As far as cross-objections having been filed by the plaintiffs are concerned, the learned first appellate court has disbelieved the version of the plaintiffs that they were inducted as tenants and by operation of law, they have become owners of the suit land.

34. The documentary evidence, which has been placed on record, does not prove the case of the plaintiffs. Ext. PA is



copy of jamabandi for the year 1989-90 wherein the suit land is being owned and possessed by the Temple/defendant. Even in Ext. PB, similar position is being reflected. Ext. PW6/A also shows the Temple/Mandir to be owner in possession of the suit land. The plaintiffs have not placed on record any document to show that the tenancy was created between the parties and that on account of induction of the plaintiffs as tenants, they paid any rent to the defendant.

35. Neither any documentary evidence has been placed on record nor oral evidence has been led by the plaintiffs to establish the case that plaintiffs were inducted as tenants by the defendant/Temple. Deposition of the plaintiffs do not inspire confidence, rather it weakens the case of plaintiffs.

36. PW1 Gaje Singh in his cross-examination, has admitted that with respect to tenancy, no written agreement was entered between the plaintiffs and defendant. He further admitted that they are not having any receipts qua the payment of the rent to the defendant. Similarly PW3 in his cross-examination has admitted that in his presence, the land was never given to the plaintiffs on rent. PW4 has also admitted in his cross-examination that they do not have any receipt in order to substantiate their case qua payment of rent. PW5 in his cross-examination has stated that the land was not given to



the plaintiffs on rent in his presence. He stated that they deposited the rent till date before the Tehsildar.

37. Therefore, from the aforesaid depositions of the plaintiffs, it is clear that the plaintiffs have not been able to plead and prove that the predecessor-in-interest along with plaintiffs were inducted as tenants by the defendant.

38. Creation of tenancy is a bilateral agreement, but admittedly no document has been placed on record to show that the tenancy was created by the defendant in favour of the plaintiffs. Rather, there is admission on the part of the plaintiffs that there is no document to show that the plaintiffs were inducted as tenants. Similarly, the plaintiffs have admitted that they are unable to place on record any receipt of rent in lieu of creation of tenancy in their favour.

39. On the other hand, it has been established on record that the suit land was given to the plaintiffs on annual contract basis for the payment of amount. It has also come on record that the contractual amount was being paid by the plaintiffs to the Tehsildar. The plaintiffs have failed to establish that where was the occasion to pay the amount to the Tehsildar which fact has been admitted by the plaintiffs and their witnesses.



40. The learned first appellate court has thrashed the entire oral as documentary evidence placed on record and has rightly come to the conclusion that the plaintiffs have failed to establish that they were inducted as tenants and by operation of law, they have become owner in possession of the suit land and on the other hand, the defendant has been able to establish that it is owner of the suit land and the possession was handed over the plaintiffs on the basis of contract by way of auction.

41. This Court is in agreement with the findings as returned by the learned first appellate court that the defendant is owner of the suit land, however the possession is with the plaintiffs. The plaintiffs being in possession of the suit land can be dispossessed only by adopting due process of law by the defendant. The plea of tenancy as raised by the plaintiffs has neither been established nor proved by leading cogent, convincing and satisfactory evidence. The defendant has admitted the possession of the plaintiffs on the basis of the annual contract, therefore, this Court is of the considered opinion that there is no perversity and illegality in the impugned judgment as passed by the learned first appellate court. The learned first appellate court being last court of fact has the occasion to appreciate oral as well as documentary



evidence placed on record and based upon that, has rightly granted the decree of injunction in favour of the plaintiffs and declined the other reliefs.

42. The Hon'ble Supreme Court in catena of judgments has held that the first appellate is the final court of the fact. No doubt, second appellate court exercising the power under Section 100 CPC can interference with the findings of fact on limited grounds such as - (a) where the finding is based on inadmissible evidence; (b) where it is in ignorance of the relevant admissible evidence; (c) where it is based on misreading of evidence; (d) where it is perverse, but that is not case in hand.

43. 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 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. 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.A-2) 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. As observed above, the Hon'ble Apex Court has repeatedly held that the scope of interference under Section 100 CPC is limited and the interference will be in those cases where the judgments are perverse and based on no evidence. On perusal of the impugned judgments and decrees, this court is of the opinion that the same are valid, legal and sustainable in the eyes of law and there is no infirmity and illegality in the same. and no interference of any kind is required in the same.The substantial question of law, as formulated in the cross-objections is answered accordingly.

46. In view of aforesaid discussions and for the reasons stated hereinabove, there is no merit in the appeal as also in cross-objections and the same are accordingly dismissed, leaving the parties to bear their own costs. Pending application, if any, also stands disposed of.

17th June, 2026
(*pankaj*)

(RomeshVerma)
Judge