

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA****RSA No. 542/2007****Decided on: 18.07.2026**

Babu Ram & anr.Appellants

Versus

Puni ChandRespondent

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

For the appellants: Mr. Ramakant Sharma & Ms. Vishali
Lakhanpal, Advocates.

For the respondent: Mr. Atharv Sharma, Advocate.

Romesh Verma, Judge (Oral)

The present appeal arises out of the judgment and decree, dated 30.6.2007, as passed by the learned Additional District Judge-II, Kangra at Dharamshala, in C.A. No. 147-G/2002, whereby the appeal preferred by the present appellants/defendants has been dismissed and the judgment and decree, dated 29.10.2002, as passed by the learned Sub Judge, 1st Class (I), Dehra, District Kangra, in Civil Suit No.

¹ *Whether reporters of Local Papers may be allowed to see the Judgment ? Yes*



119/95, decreeing the suit of the plaintiff/respondent, has been affirmed.

2 Brief facts of the case are that the plaintiff/respondent filed a suit for perpetual prohibitory injunction restraining the defendants from interfering and changing the nature of the land comprised in Khata No. 83 min, Khatauni No. 147 min, Khasra No 341/1, measuring area 0-01-87 hectares, situated at Mohal Jigal, Mauza Bharoli, Tehsil Dehra, District Kangra, H.P. and in the alternative, suit for vacant possession by demolition of structure in case the defendants succeeded in taking forcible possession or raising any structure over the suit land during the pendency of suit.

3 As per case set up by the plaintiff/respondent, the land comprised in Khata No. 83 min, Khatauni No. 147 min, Khasra No. 341, measuring area 0-19-49 hectares situated at Mohal Jigal, Mauza Bharoli, Tehsil Dehra, District Kangra, H.P. is shown to be in the ownership of one Johndu (father of the defendants/appellants) resident of Mohal Jigal, Mauza Bharoli, Tehsil Dehra, District Kangra, H.P. as per jamabandi for the year 1989-90, however, in the remarks column of the same jamabandi, mutation No. 75 qua sale of Khasra No.



341/1 measuring 0-01-87 hectares by Johndu in favour of plaintiff/respondent and his brother has been reflected. It was averred that Johndu had sold some part of land out of Khasra No 341 i.e. land comprised in Khasra No. 341/1 measuring area 0-01-87 hectares to the plaintiff and his brother for a sale consideration of Rs. 3000/- vide sale deed, dated 8.9.1994, which was duly registered in the office of sub Registrar Dehra, District Kangra. After execution of the sale deed, possession of the suit land was handed over to the plaintiff by Johndu. It was further averred that defendants are strangers to the suit land and have got no right and title over the suit land. They started interfering in the suit land and threatened to change its nature by throwing bricks and logwood over the suit land and thereafter, started raising a 'Palli' over the suit land. According to the plaintiff, the defendants are head strong persons and they have no regard for law. When the defendants were requested by the plaintiff not to carry out illegal construction, they did not pay and heed, hence the suit, as aforesaid.

4 The suit was resisted by the defendants by filing written statement, wherein preliminary objections qua



maintainability, estoppel, cause of action, etc. were raised. On merits, all the averments, as made in the plaint, were refuted. It was denied that Johndu had sold suit land to plaintiff and his brother for a sale consideration of Rs.3,000/-. It was also denied that sale deed qua the suit land was executed by Johndu in favour of the plaintiff and his brother on 8.9.1994. The case was projected by the defendants that the plaintiff, his brother and their father being very clever persons had an evil eye on the best portion of the land comprised in Khasra No.341/1 out of field No.341.

5 It was further averred that though Johndu was a simple rustic villager, however he was a man of bad habits, thus, the plaintiff and his brother taking undue advantage of Johndu got a fictitious sale deed executed in their favour for a sum of Rs.3,000/- and got mutation No.75 entered in their names. The suit land is joint Hindu ancestral and coparcenary property and the parties are governed by Kangra custom in the matter of alienation, thus, the same could not have been sold by Johndu without any legal necessity. As such, the defendants prayed for dismissal of the suit.



6 The plaintiff filed replication to the written statement, wherein the contents of the plaint were reiterated.

7 On the pleadings of the parties, the learned trial court on 26.6.2000 and 25.6.2002 framed the following issues:-

1. Whether the plaintiff is entitled to the relief of injunction? OPP.

1-A. Whether in the alternative, the plaintiff is entitled for the vacant possession of the suit land? OPP.

2. Whether the suit is not maintainable in the present form? OPD.

3. Whether the plaintiff is estopped by his act and conduct from filing the present suit? OPD.

4. Relief.

8 The learned trial court directed the respective parties to adduce evidence in support of their contentions to corroborate their respective case. The learned trial court vide its judgment and decree dated 29.10.2002 allowed the suit of the plaintiff by passing decree for possession of the suit land directing the defendants to put the plaintiff in vacant possession of the suit land after removal of 'Palli' from the suit land.



9 Feeling dissatisfied by the judgment and decree, dated 29.10.2002, defendants/appellants preferred an appeal before the learned first appellate Court on 10.12.2002, which came to be dismissed vide judgment and decree dated 30.6.2007.

10 Still feeling aggrieved by the aforesaid judgments and decrees, the defendants/appellants have preferred the present regular second appeal, which came to be admitted by this Court on 2.11.2010 on the following substantial question of law:-

Whether the sale deed executed by the father of the appellants/defendants in favour of the respondent/plaintiff is null and void its having been executed without legal necessity and without the consent of the appellants, the suit land being the ancestral and co-parcenary property and the appellants having been governed by the custom in matters of alienation?

11 It is contended by Ms. Vaishali Lakhanpal, learned counsel for the defendants/appellants that the impugned judgments and decrees, as passed by the learned courts below, are not sustainable in the eyes of law as the plaintiff has failed to prove that he had purchased the suit land from



father of the defendants/appellants in a legal manner. She has submitted that the sale deed could not have been executed by father of the defendants/appellants in favour of the plaintiff as the suit land is joint Hindu ancestral and coparcenary property and in the absence of any legal necessity, no sale deed could have been executed. She has urged that in order to establish that the suit land is joint Hindu ancestral and coparcenary property, the appellants have filed an application under order 41 Rule 27 CPC, which establishes that the suit property being ancestral and coparcenary one could not have been alienated in the absence of any legal necessity. Thus, she has submitted that after accepting the instant appeal, suit as filed by the plaintiff, deserves to be dismissed.

12 On the other hand, Mr. Atharv Sharma, learned counsel for the plaintiff/respondent, has defended the impugned judgments and decrees as passed by the learned courts below. He has submitted that on the basis of the sale deed, which was executed by father of the defendants/appellants in favour of the plaintiff and his brother, the plaintiff being title holder is well within his right to seek decree of perpetual prohibitory injunction against the



defendants/appellants and in the alternative, decree for vacant possession of the suit land. He has further submitted that since the defendants/appellants have raised 'Palli' over the suit land, thus on the strength of title, the suit as filed by the plaintiff, is very much maintainable and has rightly been decreed by the learned trial court, which stood affirmed by the learned first appellate Court. He has also contended that the application under Order XLI Rule 27 of CPC, as filed by the defendants/appellants, does not show any due diligence and it does not fall within the parameters of law as laid down in CPC, especially Order XLI Rule 27 of CPC. He has further submitted that this Court, while invoking provisions of Section 100 of CPC, will not interfere with the concurrent findings of fact, as rendered by the learned Courts below and, thus, has prayed for dismissal of the instant appeal with costs.

13 I have heard the learned counsel for the parties and have also gone through the material available on the case file.

14 As observed above, the plaintiff/respondent filed a suit for perpetual, prohibitory injunction restraining the defendants from interfering and changing the nature of the



suit land and in the alternative, decree for vacant possession was sought by demolition of structure in case the defendants succeeded in taking forcible possession or raising any structure over the suit land during the pendency of suit.

15 In order to corroborate and substantiate his case, the plaintiff has placed on record copy of sale deed, dated 8.9.1994, Ext. PW1/A. The said sale deed was duly proved by examining PW1 S.K. Vaid, Advocate, PW2 Subhash Chand, PW3 Nand Lal.

16 PW1, S. K. Vaid, Advocate, in his deposition stated that he was witness to sale deed, Ext. PW1/A. He deposed that he appended his signatures, Ext. PW1/B over sale deed, Ext. PW1/A. The sale deed was drafted by Subhash Chand, Petition Writer, on the direction of Johndu. After writing the sale deed, contents thereof were read over to Johndu Ram, who, after accepting the same to be correct, appended his thumb impression over the sale deed. Thereafter, on the askance of Johndu, he (PW1) appended his signatures, whereas Nand Lal appended his thumb impression over the sale deed. Thereafter, sale deed was taken to the Sub Registrar, who enquired from Johndu as to



whether he had sold 10 marlas of land, to which Johndu answered in affirmative.

17 PW2, Subhash Chand, is scribe of sale deed, Ext. PW1/A. He deposed that on the direction of Johndu, he wrote the sale deed qua the suit land in favour of the plaintiff and his brothers. The sale deed was executed on the basis of Tatima. After preparing the sale deed, the same was read over to Johndu, who after admitting the contents thereof to be correct appended his thumb impression over the same in the presence of witnesses, PW1 S. K. Vaid, Advocate and Nand Lal. The witnesses also put their signatures/thumb impression over the sale deed. He stated that at the time of drafting of sale deed, Johndu was in his full senses. He stated that the sale deed was entered in the register at Sr. No. 240 and over the same Johndu Ram had appended his LTI.

18 PW3 Nand Lal deposed that he knew Johndu. In the year 1994, Johndu had taken him to Dehra for execution of the sale deed. He sold 10 marlas of the land to plaintiff and his brother. He testified that he was the witness to the said sale deed. He stated that sale deed was read over to Johndu, who after admitting contents thereof to be correct,



put his thumb impression over it. Thereafter, they appeared before the Tehsildar, who had asked Johndu about the extent of sale of land, to which he replied that he had sold 10 Marlas of the land.

19 The plaintiff entered into the witness box as PW4 and deposed that the suit land was purchased by him from Johndu vide sale deed, Ext. PW1/A and he was put in possession by Johndu. He stated that he and his one brother are residing in Chandigarh, whereas his third brother, who is physically challenged, is residing at home. The defendants in their absence raised a 'Palli' over the suit land. He stated that after demolishing 'Palli', he may be handed over vacant possession of the suit land.

20 PW5 Prem Singh, Pradhan, Gram Panchayat, Adhwani, tendered in evidence his affidavit, Ext. PW5/A, wherein he stated that he had seen the suit land and he knew both the parties. He stated that plaintiff filed an application to the Gram Panchayat and pursuant thereof, he visited the spot on 29.3.2002 and found defendants and their family members raising new walls of cowshed over the suit land. He directed the defendants/respondents to stop the construction work, but they refused to do so.



21 In order to rebut the case of the plaintiff, the defendants did not lead any evidence or place on record any document.

22 The learned trial court, after relying upon oral as well as documentary evidence placed on record, decreed the suit as filed by the plaintiff for vacant possession of the suit land in his favour and against the defendants directing them to put the plaintiff in vacant possession of the suit land after removal of 'Palli' from the suit land.

23 It has come on record that father of the defendants, Johndu executed sale deed, Ext. PW1/A in favour of the plaintiff and his brother in the year 1994. In order to prove the execution of the sale deed, as discussed above, the plaintiff examined PW1 S.K. Vaid and PW3 Nand Lal, who were witnesses to the sale deed and PW2 Subhash Chand, scribe of the sale deed and these witnesses, in one voice, have duly proved execution of the sale deed, which substantiates the case, as projected by the plaintiff that the sale deed was executed in his favour and his brother by father of the defendants. It has also come on record in the statement of PW5, that on the application of the plaintiff, he



visited the spot and found the defendants and their family members raising walls of cow shed over the suit land.

24 The plaintiff has been able to establish that the defendants have raised a 'Palli' illegally over the suit land. Once the plaintiff has been able to establish title of the suit land, thus, he is well within his right to claim possession of the suit land on the strength of the sale deed. Once the defendants have failed to plead and prove title over the suit land, they cannot retain possession of the suit land, which has been purchased by the plaintiff and his brother from father of the defendants for a sale consideration of Rs.3000/-

25 It is contended by the learned counsel for the defendants/appellants that the learned Courts below have failed to frame issue with regard to legal necessity in the present case. She has submitted that since the suit land was joint Hindu family ancestral and coparcenary property, therefore, in the absence of any legal necessity, no sale deed could have been executed in favour of the plaintiff and his brother without consent of the other coparceners.

26 In the present case, the defendants/appellants have neither led any oral evidence nor any documentary evidence in order to substantiate their claim that the suit



land is joint Hindu family ancestral and coparcenary property. No document at all has been placed on record to demonstrate that the suit land is joint Hindu family ancestral and coparcenary property.

27 The contention of the learned counsel for the appellants that no issue with respect to legal necessity has been framed by the learned trial court does not hold good in view of the fact that the learned trial court had framed the issues initially way back on 26.6.2000 and thereafter additional issue was framed on 25.6.2002. Perusal of the records reveals that the said issues were read over and explained to the respective parties, and except the issues, as reproduced hereinabove, no other issues arose or claimed by the parties. Even no application was filed by the defendants/appellants for framing of additional issues. The parties went to trial fully knowing well their case and as observed above, neither any oral evidence nor any documentary evidence has been placed on record by the defendants to substantiate their case. Merely on the oral assertion and bald statement of the defendants, it cannot be presumed or established that the suit land is joint Hindu family ancestral and coparcenary property and the same



without consent of other coparceners and in absence of any legal necessity could not have been alienated. To the similar effect no material has been placed on record that the parties are governed by custom in matters of alienation. Save and except one line incorporated in the written statement, there is no proof of the said plea taken by the defendants.

28 It is contended by the learned counsel for the appellants that the appellants have filed an application under Order 41 Rule 27 CPC being registered as CMP No. 818/2010 seeking permission to lead additional evidence. She has submitted that the documents, which have been appended with the application, would show and prove that the suit land is joint Hindu family ancestral and coparcenary property and the same has been inherited by Johndu from his forefathers.

29 To the said application, reply has been filed by the plaintiff/respondent, wherein categorical defence has been taken that the said application is without any merit as it lacks ingredients of Order XLI Rule 27 of CPC. He has further submitted that there is no due diligence on the part of the appellants to file and maintain the aforesaid application as the appellants intend to place on record



documents pertaining to the year 1936-37, which, at this stage, cannot be permitted to be taken on record to fill up lacunae.

30 It would be apposite to reproduce provisions of Order XLI Rule 27 of CPC, which read as under:

27. Production of additional evidence in Appellate Court.—(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if — (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

[(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

31 Perusal of the provisions as reproduced hereinabove shows that party who seeks to produce



additional evidence must establish that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed.

32 Admittedly, in the present case, the suit was instituted by the plaintiff/respondent on 20.3.1995. The said suit came to be decreed on 29.10.2002 and thereafter the appeal filed under Section 96 of CPC came to be instituted on 10.12.2002, which was decided on 30.6.2007.

33 As rightly pointed by the learned counsel for the respondent that as per the parameters as laid down by the provisions of CPC, the appellants have failed to establish due diligence as to why such documents, which pertain to the year 1936-37, were not placed on record by the defendants/appellants before the learned trial court. Since the documents were very much in existence for more than 45 years, therefore, now at the stage of regular second appeal, the application for additional evidence cannot be allowed.

34 In support of his contention, Mr. Atharv Sharma, Advocate, has relied upon judgment of the Hon'ble Supreme



Court in **Gobind Singh vs. Union of India, 2026 LiveLaw (SC) 221**, wherein the Hon'ble Supreme Court, after referring to its decision in **State of Karnataka vs. K.C. Subramanya, (2014) 13 SCC 468**, has held that unless the requirements stipulated under Order XLI Rule 27 of CPC are strictly satisfied, a party cannot be permitted to adduce additional evidence at the appellate stage. Such permission cannot be granted as a matter of course, nor can additional evidence be introduced at the whim or convenience of a litigating party.

35 As observed earlier, the suit was filed in the year 1995 and now at the stage of regular second appeal, defendants/appellants cannot be permitted to place on record documents in question.

36 Apart from that, the learned counsel for the appellants have failed to establish that the suit land and the land as depicted in the revenue records sought to be placed on record as find mention in application under Order XLI Rule 27 of CPC are same and similar, therefore, on this count also, the appellants cannot be permitted to lead additional evidence at the appellate stage.



37 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 of CPC can interfere 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.

38 The Hon'ble Supreme Court while dealing with scope of interference under Section 100 of CPC 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.”

39 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 fulfil his obligation and accept performance when the time for performance arrives.”

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

41 Both the Courts below have rightly appreciated the point in controversy after considering the oral as well as documentary evidence placed on record and this Court does not find any illegality or perversity in the impugned judgments and decrees, as concurrently passed by the learned Courts below, and the same are upheld. The substantial question of law is answered accordingly.

42 In view of above, the present appeal being devoid of any merit deserves to be dismissed. Ordered accordingly. Pending application(s), if any, also stands disposed of.

18th July, 2026
(*pankaj*)

(Romesh Verma)
Judge