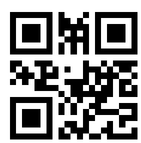

2026:HHC:16742

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

**RSA No. 169/2024**

**Decided on: 05.05.2026**

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Radha Devi & ors. .....Appellants

Versus

Gangi Devi & anr. ....Respondents

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**Coram:**

***The Hon'ble Mr. Justice Romesh Verma, Judge.***

*Whether approved for reporting?[1] Yes*

For the Appellants: Mr. Dibender Ghosh, Advocate.

For the Respondent: Ms. Manisha Thamta, Advocate, for respondent No.1.

Mr. Vipin Pandit & Mr. Parikshit Sharma, Advocates, for respondent No.2.

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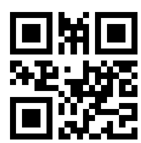
**Romesh Verma, Judge (oral)**

The present appeal arises out of the judgment and decree, dated 26.02.2024, as passed by the learned Additional District Judge, Kinnaur, District at Rampur Bushahr, whereby the appeal preferred by the appellants/defendants was dismissed and the judgment and decree, dated 18.01.2023 as passed by the learned Senior Civil Judge, Rampur Bushahr,

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

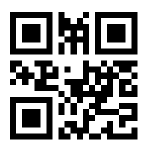




District Shimla, was upheld whereby, the suit as filed by the respondents/plaintiffs was decreed.

2 The brief facts of the case are that the present respondent No.1/plaintiff filed a suit for declaration and perpetual injunction in the Court of learned Senior Civil Judge, Rampur Bushahr, District Shimla, on 24.10.2016. It was averred that she is legally wedded wife of late Chandu Lal, who was employed as Gardener in Municipal Council Rampur. The marriage of the plaintiff and Chandu Lal was solemnized in the month of June 1967. Prior to marriage of Chandu Lal with the plaintiff, he was married to Smt. Ghrunku, daughter of Ratnu, resident of Village Dugiriuni (Pipti), Ward No.1, MC Rampur. Out of the wedlock of Ghrunku with Chandu Lal, two issues, namely Jai Chand and defendant No.4 Babli Devi were born. Marriage of Chandu Lal with Ghrunku did not survive for a long period and the same was dissolved in the year 1966 as their marriage had irretrievably broken down due to differences between them.

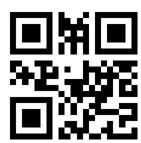
3 As per the plaintiff, after dissolution of marriage with Chandu Lal, Ghrunku got remarried to Takhu Ram, son of Tebnu, resident of Village Thanti in the year 1968. Out of the wedlock of Takhu Ram and Ghrunku, three issues i.e. defendants No. 1 to 3 were born, who have inherited immovable





and movable properties of Takhu Ram after his death. On the other hand, out of the wedlock of plaintiff with Chandu Lal, though many issues were born, but only son, Rajinder @ Raju and daughter, Babli Devi, survived and other issues died at their infant stage. Chandu Lal died on 19.10.1978 at Rampur due to prolonged illness and all monetary benefits were released in favour of the plaintiff being his wife as per the entry recorded in the service book maintained during the course of his employment by the concerned Department and other legal heirs. Similarly, the plaintiff and other legal heirs were also entitled to inherit immovable property left by the deceased Chandu Lal in equal shares.

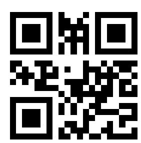
4 It was averred that after death of Chandu Lal, the plaintiff was provided government job on compassionate grounds and at present the plaintiff is getting pension after her superannuation. The plaintiff came to know about attestation of mutation No. 7338, dated 5.11.1980 qua inheritance of Chandu Lal in favour of his former wife, Ghrunku to the extent of $1/4^{th}$ share in the month of August, 2016. Therefore, suit for declaration was filed before the learned trial court with a prayer that the plaintiff be declared owner in possession of the suit land comprised to the extent of $1/8^{th}$ share measuring 00-05-03 hectares, out of the total land comprised in Khata





Khatauni No. 42/91, Khasra No.35, 36, 37 measuring 00-40-28 hectares, situated in Mohal Odda, Tehsil Rampur, District Shimla, and to declare mutation No. 7338, dated 5.11.1980 attested by AC 2nd Grade Rampur qua Ghrunku as wife of Chandu Lal to be illegal, inoperative, null and void and inoperative and not binding on rights of the plaintiff. Further, entry qua the ownership to the extent of 1/8th share of Ghrunku was also sought to be declared as illegal, inoperative and not binding on the rights of the plaintiff.

5 The suit of the plaintiff/respondent No.1 was contested by the defendants No. 1 to 4/appellants by filing written statement, wherein various preliminary objections were raised including maintainability, cause of action, limitation. On merits, it was averred that no marriage was ever solemnized between the plaintiff and Chandu Lal especially in June 1967. Ghrunku lived for many year as wife of Chandu Lal, but due to differences, marriage broke down and she left her matrimonial house in the year 1968 and started living with Takhu Ram. The marriage between Ghrunku and Chandu Lal was never dissolved but after having ousted by Chandu Lal, she lived with Takhu Ram and delivered three issues i.e. defendants No. 1 to 3, from lions of Takhu Ram, without any marriage. It was further averred that the plaintiff was fully aware of the



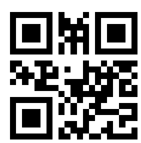


attestation of mutation No. 7338, dated 5.11.1980 and did not assail the same admitting it to be correct. Therefore, all the averments and contentions as raised in the plaint were denied and refuted.

6 The plaintiff filed replication to the written statement filed by defendants No.1 to 4 and reiterated the averments as made in the plaint.

7 The learned trial court on 27.8.2018 framed the issues in the following manner:-

1. Whether the plaintiff is legally wedded wife of late Sh Chandu Lal, as alleged? ..OPP.
2. Whether the plaintiff is entitled for decree of declaration to the effect that she is owner in possession over the suit land to the extent of 1/8 share, as prayed for? ..OPP.
3. Whether the plaintiff is entitled for decree of declaration to the effect that the mutation NO. 7338 dated 05.11.1980 attested by AC, IInd Grade Rampur entering Ghrunku as wife of Chandu Lal is wrong, illegal, null and void, as alleged ? ..OPP.
4. Whether the plaintiff is entitled for decree of declaration to the effect that entry qua ownership of Ghrunku to the extent of 1/5 share of the suit land is required to be declared as illegal, as prayed for? ..OPP.

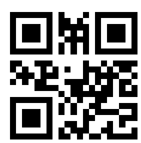




5. Whether the plaintiff is entitled for decree of permanent prohibitory injunction, as prayed for? ..OPP.
6. Whether the suit is not maintainable in the present form, as alleged? ..OPD.
7. Whether the plaintiff has not come to the Court with clean hands, as alleged? ..OPD.
8. Whether the plaintiff has no cause of action to file the present suit, as alleged? ..OPD.
9. Whether the suit is barred by limitation, as alleged? ..OPD.
10. Relief.

8 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 18.1.2023 decreed the suit of the plaintiff/respondent No.1 with cost and mutation No. 7338 dated 5.11.1980 attested by Assistant Collector, 2nd Grade, Rampur, entering Ghrunku as wife of Chandu Lal in respect of the suit land was declared to be wrong, illegal and null and void and the entry qua ownership of Ghrunku to the extent of 1/5th share of the suit land was also held to be illegal.

9 The defendants, feeling dissatisfied by the judgment and decree, dated 18.1.2023, as passed by the learned trial court, preferred an appeal before the learned first Appellate



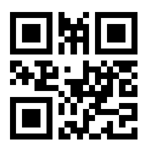


Court on 9.3.2023, which came to be dismissed vide judgment and decree dated 26.2.2024.

10 Still feeling aggrieved by the aforesaid judgments and decrees, the appellants/defendants are before this Court by filing the instant regular second appeal.

11 It is contended by Mr. Dibender Ghosh, learned counsel for the appellants, that the impugned judgments and decrees, as passed by the learned Courts below, are erroneous and liable to be quashed and set aside. The Courts below have not appreciated point in controversy and have wrongly decreed the suit filed by plaintiff. He has further submitted the oral as well as documentary evidence, as placed on record, has been misread and misinterpreted, as a result of which, after accepting the instant appeal, the suit filed by the plaintiff ought to have been rejected.

12 On the other hand, Ms. Manisha Thamta, learned counsel for plaintiff/respondent No.1, has defended the impugned judgments and decrees as passed by the learned courts below. She has submitted that both the learned Courts below have concurrently passed the judgments and decrees in favour of the plaintiff/respondent No.1 and the same do not call for any interference by invoking provisions of Section 100 CPC.





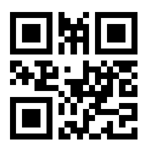
13 Mr. Vipin Pandit, learned counsel for respondent No.2, has also defended the impugned judgments and decrees and has submitted that the learned Courts below have thrashed entire evidence on record and has rightly come to the conclusion that the plaintiff was legally wedded wife of Chandu Lal and mutation which was attested in favour of Ghrunku, is illegal, null and void and not binding on the rights of his clients.

14 I have heard the learned counsel for the parties and have also gone through the records of the case carefully.

15 With the consent of the parties, the instant appeal is admitted and finally heard on the following substantial question of law:-

> Whether the impugned judgments and decrees, as passed by the learned courts below, are erroneous on account of fact that the learned Courts below have misread and misinterpreted the oral as well as documentary evidence on record?

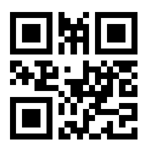
16 In the present case, the plaintiff/respondent No.1 had approached the learned trial court for seeking declaration and perpetual injunction on the ground that she is legally wedded wife of late Sh. Chandu Lal. The case set up by the plaintiff is that Chandu Lal was earlier married to Ghrunku





and out of said wedlock, they had two issues, namely Jai Chand and defendant No.4 Babli. Since differences arose between the parties, therefore, marriage could not last forever and the same was dissolved in the year 1966. After dissolution of marriage with Chandu Lal, Ghrunku got remarried to Takhu Ram and defendants No. 1 to 3 were born out of said wedlock. The said defendants inherited immovable and movable properties of Takhu Ram after his death. Out of the wedlock of plaintiff with Chanu Lal, only son Rajinder @ Raju and daughter Babli survived and other issues died at their infant stage.

17 In order to substantiate her contention, the plaintiff appeared in the witness box as PW1 and tendered in evidence her affidavit, Ext. PW1/A, wherein she deposed that she got married to Chandu Lal in the year 1968 and out of the said wedlock, four children were born. However, she has now only one son alive namely Raju. She deposed that her husband was working in M.C. Rampur as Class-IV employee, who died in the year 1978. After the death of Chandu Lal, entire monetary benefits, which were due and permissible towards late Chandu Lal, were given to her. Apart from that, M.C. Rampur has also granted government job to her on compassionate grounds. In the year 2012 she retired from service and now she is getting

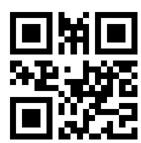




pension. Her husband Chandu Lal got divorce from his first wife and since 1968 she (Ghrunku) is residing with her husband namely Takhu Ram. Out of lions of Takhu Ram and Ghrunku, defendants No. 1 to 3 were born. She deposed that she came to know about mutation No. 7338, dated 5.11.1980 in the month of August, 2016 and as per the same, in the revenue record, name of Ghrunku is shown as wife of Chandu Lal, which is incorrect and liable to be quashed and set aside and not binding on rights of the plaintiff.

18 The plaintiff was cross-examined, however nothing substantial could be extracted from her cross-examination. She stated that inheritance was attested in favour of her son namely Raju after death of late Chandu Lal. She admitted that relationship between Ghrunku and Chandu Lal deteriorated and thereafter Chandu Lal ousted Ghrunku from his house.

19 PW2 Dhani Ram tendered in evidence his affidavit, Ext. PW2/A, wherein he deposed that he knows the parties. Ghrunku was earlier married to Chandu Lal and the said marriage was dissolved in the year 1966. Both the parties divorced each other and thereafter Ghrunku got remarried to Takhu Ram in the year 1968. Out of the wedlock of Ghrunku and Takhu Ram, three children, namely Radha Devi, Layak Ram and Meena Kumari were born. Chandu Lal, after obtaining



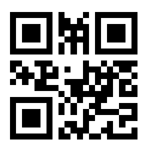


divorce from Ghrunku, got married to the plaintiff, Gangi Devi. After the death of Chandu Lal, the plaintiff got government job on compassionate grounds.

20 Devi Ram appeared in the witness box as PW3 and he also tendered in evidence his affidavit, Ext. PW3/A. He has deposed that Ghrunku was his aunt and she got married to his uncle namely Takhu Ram. Out of the wedlock of his uncle and aunt, three children, namely, Radha Devi, Layak Ram and Meena Kumari, were born. After the death of his uncle, movable and immovable properties have been inherited by Ghrunku and their children in equal shares. He has stated that Gangi Devi was married to Chandu Lal, who was working in M.C. Rampur. He was told by his aunt that earlier she was married to Chandu Lal and after that the parties took divorce amongst them.

21 In his cross-examination, he has stated that he does not have any record in order to substantiate that there was a valid divorce between Chandu Lal and Ghrunku.

22 PW4 Bala Ram deposed that he has been working as Junior Assistant in M.C. Rampur since 1996. He brought the record as requisitioned by the Court. He stated that Gangi Devi has been shown to be wife of Chandu Lal in the service record. After the death of Chandu Lal, plaintiff was offered

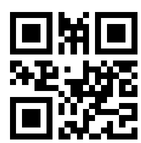




appointment on compassionate grounds. Gangi Devi was appointed in M.C. Rampur on 27.12.1998. The plaintiff got retired from M.C. Rampur on 30.6.2013.

23 PW5 Gokal Ram, deposed that he has been working as Panchayat Secretary since 2017. He has brought the Panchayat record. He produced copy of death certificate, Ext. PW1/C, wherein date of death of Ghrunku, wife of Takhu Ram, has been recorded as 20.12.2014. He also produced copies of Pariwar Registers, Ext. PW1/D, Ext. PW1/E, Ext. PW1/F and Ext. PW1/G, wherein Ghrunku has been shown to be wife of Takhu Ram. He also proved on record copy of certificate, Ext. PW1/J reflecting therein Gangi Devi to be wife of Chandu Lal.

24 In order to rebut the case of the plaintiff, Layak Ram appeared in the witness box as DW1 and tendered in evidence his affidavit, Ext. DW1/A. He has deposed that the plaintiff is not legally wedded wife of late Sh. Chandu Lal and that his mother Ghrunku was the legally wedded wife of Chandu Lal. Both of them resided together as husband and wife and out of the wedlock, Jai Chand and Babli were born. On account of some differences, both the parties got separated and his mother left house of Chandu Lal in the year 1968 and started living with his father namely Takhu Ram. He stated that no valid divorce took place between his mother and late

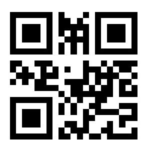




Chandu Lal. Marriage between his mother and Chandu Lal was never dissolved by any legal order of the competent court of law.

25 In his cross-examination, he has admitted that after death of his father, Takhu Ram, inheritance was attested in favour of Layak Ram, Yash Pal and Satpal. He stated that his father expired in 2011 and Ghrunku died in 2014. He admitted that after death of Chandu Lal, Gangi Devi was appointed on compassionate grounds. He admitted that out of lions of Takhu Ram and Ghrunku, three children were born. He further admitted that since 1968, Ghrunku lived in the house of Takhu Ram till her death and she never went to the house of Chandu Lal.

26 The plaintiff in order to substantiate her contention has placed on record documents, Ext. PW1/C, death certificate of Ghrunku and nakal pariwar register Ext. PW1/D, in which Ghrunku has been shown to be wife of Takhu Ram. Similarly, in nakal pariwar registers, Ext. PW1/F and Ext. PW1/G Ghrunku has been shown to be the wife of Takhu Ram. Similarly certificate, Ext. PW1/H, reveals that Ghrunku has been entered in the part I of parwiar register at page No.90, Sr. No.2 to be wife of the Takhu Ram. Ext. PW1/J is copy of certificate which shows the plaintiff Gangi Devi to be wife of

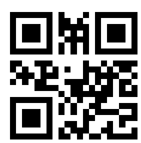




Chandu Lal. As per this certificate, said entry is incorporated in the M.C. Rampur.

27 In case oral evidence in conjunction with documentary evidence placed on record is seen, it reveals that the plaintiff has been able to establish and prove on record that after dissolution of marriage between Ghrunku and Chandu Lal, Chandul Lal got remarried to plaintiff and out of the said wedlock three children were born. It has been substantiated in the oral evidence that Chandu Lal was working as Class IV employee in M.C. Rampur and after his death, the plaintiff was appointed on compassionate grounds. After her retirement, she is getting pension. It has also come on record that after leaving house of Chandu Lal, Ghrunku was living with Takhu Ram and out the said wedlock, three children i.e. defendants No. 1 to 3 were born. The learned courts below have rightly come to the conclusion that the plaintiff was entitled to inherit the property of Chandu Lal after his death in the year 1978. Therefore, mutation No. 7338 dated 5.11.1980, which was attested by the revenue authority in favour of Ghrunku after the death of Chandu Lal is illegal, null and void and without any basis and has been rightly set aside by the learned Courts below.

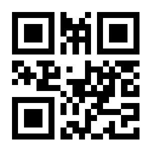
28 The learned counsel for the respondents has placed reliance upon judgment of the Hon'ble Supreme Court in





***Shiramabai vs. the Captain, Record Officer for OIC Records, AIR 2023 (SC) 3920,*** wherein it has held that Section 114 of Evidence Act, 1872 permits the Court to presume the existence of certain facts, which it thinks are likely to have happened in relation to the facts of a particular case. It was contended in the aforesaid case that the said presumption of a legitimate marriage between the deceased and the appellant No. 1 therein became stronger as during his lifetime, the deceased had approached the respondents with an application seeking endorsement of the name of the appellant No. 1 in his Service Book. It was held that it is no longer res integra that if a man and woman cohabit as husband and wife for a long duration, one can draw a presumption in their favour that they were living together as a consequence of a valid marriage. This presumption can be drawn under Section 114 of the Evidence Act. It would be appropriate to reproduce paras 11 to 19 of the aforesaid judgment, which read as under:-

> *"11. It is no longer res integra that if a man and woman cohabit as husband and wife for a long duration, one can draw a presumption in their favour that they were living together as a consequence of a valid marriage. This presumption can be drawn under Section 114 of the Evidence Act that states as follows:*



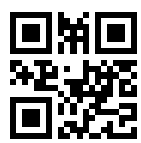


> *"114. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case."*

*12. In this above context, we may refer to Andrahennedige Dinohamy and Another v. Wijetunge Liyanapatabendige Balahamy and Others, where the Privy Council observed thus:*

> *".....where a man and woman are proved to have lived together as man and wife, the law will presume, unless the contrary be clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage.*
>
> *xxx xxx xxx*
>
> *"The parties lived together for twenty years in the same house, and eight children were born to them. The husband during his life recognized, by affectionate provisions, his wife and children. The evidence of the Registrar of the District shows that for a long course of years the parties were recognized as married citizens, and even the family functions and ceremonies, such as, in particular, the reception of the relations and other guests in the family house by Don Andris and Balahamy as host and hostess— all such functions were conducted on the footing alone that they were man and wife. No evidence whatsoever is afforded of repudiation of this relation by husband or wife or anybody."*

*13. In Mohabbat Ali Khan v. Muhammad Ibrahim Khan And Others , it was again observing by the Privy council that:*





> *"….The law presumes in favour of marriage and against concubinage when a man and a woman have cohabited continuously for a number of years……"*

*14. Similarly, in Badri Prasad v. Dy. Director of Consolidation and Others, this Court held as follows:*

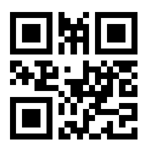
> *"…….A strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin. Law leans in favour of legitimacy and frowns upon bastardy….."*

*15. In S.P.S. Balasubramanyam v. Suruttayan alias Andali Padayachi and Others, this Court held as under:*

> *"4. What has been settled by this Court is that if a man and woman live together for long years as husband and wife then a presumption arises in law of legality of marriage existing between the two. But the presumption is rebuttable (see Gokal Chand v. Parvin Kumari).*

*16. It is true that there would be a presumption in favour of the wedlock if the partners lived together for a long spell as husband and wife, but, the said presumption is rebuttable though heavy onus is placed on the one who seeks to deprive the relationship of its legal origin to prove that no marriage had taken place (refer: Tulsa and Others v. Durghatiya and Others ).*

*17. A similar view has been taken by this Court in Madan Mohan Singh and Others v. Rajni Kant and Another 33, Indra Sarma v. V.K.V. Sarma(supra) and Dhannulal And Others v. Ganeshram And Another.*





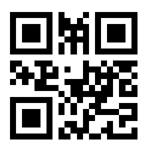
*18. In the case of Gokal Chand v. Parvin Kumari alias Usha Rani(supra) this Court observed thus :*

> *"......Continuous cohabitation of man and woman as husband and wife and their treatment as such for a number of years may raise the presumption of marriage, but the presumption which may be drawn from long cohabitation is rebuttable and if there are circumstances which weaken and destroy that presumption, the court cannot ignore them."*

*19. In KatTakhundi Edathil Valsan's Case (supra), citing the abovesaid decisions and relying on Section 114 of the Evidence Act, this Court held in the facts of the said case that there was a presumption of the marriage between the parents of the plaintiffs on the ground of their long cohabitation status, entitling their offspring to claim their share in the suit schedule property."*

29 As held by the Hon'ble Supreme Court hereinabove, there was presumption of marriage between Chandu Lal and Gangi Devi on the ground of their long cohabitation status, entitling her and their offspring to claim their share in the suit schedule property.

30 The learned Courts below after appreciating oral as well as documentary evidence has rightly come to the conclusion that the plaintiff was the legally wedded wife of Chandu Lal and mutation of inheritance was wrongly attested in favour of Ghrunku.

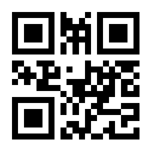




31 The Hon'ble Supreme Court in catena of judgments has held that the first appellate is the final court of the fact. No doubt, second appellate court exercising the power under Section 100 CPC can interference with the findings of fact on limited grounds such as - (a) where the finding is based on inadmissible 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.

32 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*

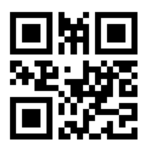




*accordance with law in force at the relevant time. The conditions mentioned in the section must be strictly fulfilled before a second appeal can be maintained and no court has the power to add or to enlarge those grounds. The second appeal cannot be decided on merely equitable grounds. The concurrent 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*

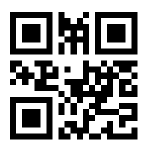




*it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences of fact are possible, one drawn by the lower appellate court will not be interfered by the High Court in second appeal. Adopting any other approach is not 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*

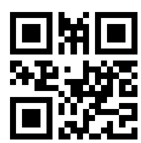
*23. To be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law "involving 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.”*





33 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. <u>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</u>*

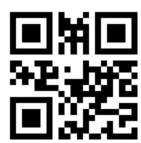




*evidence available on record as also the circumstance that signature(s)/thumbmark(s) appearing on the document (Exb.A-2) were not disputed. Otherwise also, while disturbing the finding of the first appellate court, the High Court did not hold that the finding returned by the first appellate court is 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."*

34 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 no interference of any kind is required in the same. The substantial question of law is answered accordingly.

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

**(Romesh Verma)**
**Judge**

**05th May, 2026**
*(pankaj*