

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

**RSA No.38 of 2025**

**Reserved on:24.02.2026**

**Decided on: 27.02.2026**

---

Prem Singh @ Durga Dass

....Appellant

Versus

Chaman Lal

...Respondent

---

*Coram*

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

*Whether approved for reporting?*

---

For the appellant: Mr. H.S. Rangra, Advocate.

For the respondent: Mr. Ajay Chandel, Advocate.

---

**Romesh Verma, Judge**

The present regular second appeal arises out of judgment and decree as passed by the learned Additional District Judge, Sarkaghat, District Mandi, H.P. dated 6<sup>th</sup> November, 2024, whereby the appeal preferred by the present appellant has been ordered to be dismissed and the judgment and decree as passed by learned Civil Judge, Court No.2, Sarkaghat, District Mandi, H.P. dated 22<sup>nd</sup> June, 2022 has been affirmed.

2. Brief facts of the case are that the plaintiff/respondent Chaman Lal filed a suit for possession against the defendant/appellant in the Court of learned Civil Judge, Court No.2, Sarkaghat, District Mandi, H.P. on 19.01.2013. It was stated in the plaint that the suit land comprised in Khata/Khatauni

No.53/60, containing Khasra No.897/118, land measuring 00-00-68 Hectares, situated in village Balhra illaqua Hatli Sub Tehsil Baldwara, District Mandi, H.P. is exclusively owned and possessed by the plaintiff. It was stated that the plaintiff and his brother jointly constructed the house over the suit land in 1992-1993. Further, it has been averred that the plaintiff and his brother, namely, Jagtar Singh gave the house situated over the suit land to the defendant, who happens to be their real brother and he is BAMS doctor for doing practice for some time. Further, it has been stated that after some time the defendant got a government job but surprisingly he did not vacate the house situated over the suit land being owned by the plaintiff with an intention to grab the house of the plaintiff. The plaintiff and his brother Jagtar Singh are residing in village Balhra in their parental house, whereas the disputed house is situated just adjacent to the road. Though, a request was made to the defendant to vacate the house in question, however, he did not pay any heed and refused to the same. Therefore, under such circumstances, the plaintiff filed a suit for vacant possession of the suit property.

3. The suit was contested by the defendant by taking various objections such as limitation, valuation, court fee, jurisdiction, cause of action, estoppel and maintainability etc. The

defendant refuted the revenue entries showing the plaintiff to be owner-in-possession of the suit land in the revenue records. He submitted that he had constructed the house over the suit land in the year 1990-1991 and since then he is residing in the said house as a owner. He further averred that he came in possession of the house on 15.07.1990 and started the construction of his house over the suit land. He raised a plea that the possession over the suit land by the defendant is open, hostile, naked and in the knowledge of the plaintiff since 15.07.1990. Therefore, he has become owner of the suit property by virtue of adverse possession. It was also stated that ejectment proceedings under Section 163 of the Himachal Pradesh Revenue Act were initiated against the plaintiff for his ejectment from the suit land. The Assistant Collector 1<sup>st</sup> Grade passed the eviction order against the plaintiff, however, feeling dissatisfied, the plaintiff preferred an appeal before the Sub Divisional Collector, Sarkaghat. It was submitted that said appeal was dismissed and thereafter the plaintiff preferred a revision before the Divisional Commissioner, Mandi against the order of Sub Divisional Collector, Sarkaghat. The Divisional Commissioner, Mandi, accepted the revision and proprietary right qua the suit land was conferred on the plaintiff on paying market value of the suit land. He submitted that the order

of conferment of proprietary right on the plaintiff by the Divisional Commissioner, Mandi, is bad in the eyes of law and without any jurisdiction.

4. The plaintiff filed the replication to the written statement and all the averments as made in the plaint were reiterated.

5. The learned Civil Judge, Court No.2, Sarkaghat, District Mandi, H.P. framed the following issues in the matter:

*“1. Whether plaintiff is entitled for possession, as prayed for? OPP*

*1A. Whether defendant has become the owner of the suit land by way of adverse possession, as prayed for? OPD*

*2. Whether suit is not maintainable in present form, as alleged? OPD*

*3. Whether the plaintiff has no cause of action and locus standi to file the present suit, as alleged? OPD*

*4. Whether the plaintiff is estopped by his own act, conduct and acquiescence to file the present suit, as alleged? OPD*

*5. Whether the suit of the plaintiff is not within limitation, as alleged? OPD*

*6. Relief.”*

6. The parties were directed to adduce evidence in support of their contentions and finally vide its judgment and

decree dated 22<sup>nd</sup> June 2022, learned Civil Judge, Court No.2, Sarkaghat, District Mandi, decreed the suit filed by the plaintiff.

7. Feeling aggrieved, the defendant preferred an appeal in the Court of learned Additional District Judge, Sarkaghat, District Mandi, H.P. on 22.07.2022. Learned appellate Court vide its judgment and decree dated 6<sup>th</sup> November, 2024 dismissed the appeal as preferred by the defendant and affirmed the judgment and decree as passed by the learned trial Court.

8. Feeling dissatisfied, the defendant/appellant is before this Court by filing the present regular second appeal.

9. It is contended by learned counsel for the appellant that Courts below have erred by decreeing the suit as filed by the plaintiff. He further submits that the defendant has matured his title by way of adverse possession. Therefore, no relief could have been granted to the plaintiff. It has further been contended that the order of conferment of proprietary right on the plaintiff by the Divisional Commissioner, Mandi is bad in the eyes of law and the conferment of the proprietary right could not have been granted to the present respondent/plaintiff.

10. On the other hand, the judgments and decrees as passed by the Courts below have been supported by Mr. Ajay Chandel, learned counsel for the respondent. He has specifically

submitted that the plea of ownership and adverse possession is mutually destructive and no relief can be granted to the defendant. He has submitted that being owner of the suit property which was being illegally occupied by the defendant/appellant the Courts below has rightly passed the decree of vacant possession in favour of the plaintiff.

11. I have heard learned counsel for the parties and perused the case file. With the consent of parties, the appeal is taken up for final disposal at the admission stage.

12. From the perusal of the case file, it reveals that the defendant has set up the plea in the written statement that he has raised the construction of the house over the suit land and he is residing over the same and by virtue of adverse possession he has become owner of the suit property..

13. Plaintiff Chaman Lal entered into the witness box in order to depose in support of his case and submitted that eviction proceedings were initiated against him for encroaching over the Government land. He submitted that an order of eviction was passed against him by Tehsildar Sarkaghat and thereafter, the appeal was also dismissed by Sub Divisional Collector, Sarkaghat. He stated that Divisional Commissioner, Mandi, conferred proprietary right on him and thereafter he constructed

the house over the suit land regarding which case for illegal encroachment was filed against him. He submitted that the defendant is his younger brother and that he wanted to open a clinic that is why he gave the house to the defendant on the undertaking that the defendant shall vacate the house once he got the job with the Government. He stated that after getting the Government job, the defendant did not vacate the house and when he was asked to do so he flatly refused. He specifically denied that the house was constructed by the defendant. He further denied that the defendant is living in the house in dispute after its construction since 15.07.1990. He further denied that the house was got constructed through a mason, namely, Lalman by the defendant.

14. In order to rebut the evidence, as led by the plaintiff, the defendant examined four witnesses. DW-1 Roop Lal stated that the defendant had purchased some portion of the suit land from one Shri Shakti Chand, who delivered the possession of the land to the defendant. He stated that when the construction of the house was going on then the Patwari and Kanungo visited the suit land and took the measurements. He stated that the plaintiff never possessed the suit land as suit land was in the possession of Shakti Chand prior to the construction of the house and

thereafter it is in the possession of the defendant. In the cross-examination, he stated that he does not know the khasra number of the suit land.

15. The defendant examined himself as DW-2, wherein he stated the facts as enumerated in the written statement. He stated that he raised the construction of the house over the suit land and he is residing there. In the cross-examination, he stated that he came to know about the ownership of the Government qua the suit land when he started the construction of his house. He stated that he is not aware about encroachment proceedings qua the suit land before the Sub Divisional Collector, Sarkaghat and Divisional Commissioner Mandi. He stated that he raised the construction of the house over the suit land in the year 1990. He stated that he got constructed his house from mason, namely, Lalman. He further stated that he can produce the registered sale deed regarding the same.

16. The defendant examined DW-3 Lalman in order to support his case, who has stated that the defendant is in possession of the suit land till date and the plaintiff never remained in the possession of the suit land. He further submitted that the house in dispute was constructed by the defendant as the defendant gave him Rs.25,000/- for the construction of the house.

However, he stated that he cannot produce any document in this regard.

17. The defendant examined Som Dutt as DW-4. He stated that he remained Patwari and his office was situated just adjoining to the suit land. He stated that the house in dispute was constructed by defendant and Lalman was the mason. He has admitted that during his service period he started the encroachment proceedings against the plaintiff. He admitted that the case of illegal encroachment was registered against the plaintiff and at that time the house was already constructed there.

18. The plaintiff has placed on record copy of jamabandi Ext. PW-1/A, which shows that he is owner-in-possession of the suit land. It has come on record that eviction proceedings under Section 163 of H.P. Land Revenue Act were initiated against the plaintiff and the same were affirmed by the Assistant Collector, Sarkaghat on 19.08.1992. However, revision petition preferred before the Divisional Commissioner, Mandi, was allowed and vide its order dated 10.05.1994 proprietary right qua the suit land was conferred on the plaintiff subject to the payment of market value of the suit land. Therefore, the plaintiff has been able to establish his title. The Divisional Commissioner, Mandi conferred proprietary right on the plaintiff subject to payment of market

value, which was paid by him and subsequently necessary mutation was attested in favour of the plaintiff on 23.11.1994. The plaintiff had filed a suit for vacant possession on the basis of title. The defendant had set up the plea of adverse possession, however, from the perusal of the case file, it reveals that necessary ingredients of adverse possession as required under the law are missing. Specific issue qua the adverse possession i.e. issue No.1A was framed by learned trial Court and the said issue was answered against the defendant.

19. The question whether the defendant had proved his adverse possession over the suit land has concurrently been answered in negative by both the Courts. In order to prove the adverse possession, it was incumbent upon the defendant to have proved the date and period, when the possession became adverse and thereafter uninterrupted continuity thereof with requisite hostile animus for continuous 12 years was also required to be proved. The Courts below have come to the conclusion that the possession of the defendant is permissive and the plaintiff is entitled for vacant possession. It is settled position of law that permissive possession cannot be construed as adverse possession and possession being permissive cannot become adverse unless hostile animus was expressed at any

particular time to the knowledge of owner. It is the settled position of law that mere possession for howsoever length of time does not result in converting the permissive possession into adverse possession. By merely raising a plea of adverse possession no right can be conferred upon the said party. Qua this issue there are concurrent findings of fact by both the Court which does not call for any interference.

20. The Hon'ble Supreme Court has laid down the exposition of law qua adverse possession in the following manner:

(i) In ***T. Anjanappa and others vs. Somalingappa and another, (2006) 7 SCC 570***, the Hon'ble Supreme Court held as under:

*"12. The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person*

*doing those acts is the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property.*

13. *Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them.*

*"24. It is a matter of fundamental principle of law that where possession can be referred to a lawful title, it will not be considered to be adverse. It is on the basis of this principle that it has been laid down that since the possession of one co-owner can be referred to his status as co-owner, it cannot be considered adverse to other co-owner.*

14. *Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of the rightful owner and tends to extinguish that person's title. Possession is not held to be adverse if it can be referred to a lawful title. The person setting up adverse possession may have been holding under the rightful Owner's title e.g. trustees, guardians, bailiffs or agents. Such persons cannot set up adverse possession.*

*"Adverse possession" means a hostile possession which is expressly or impliedly in denial of title of the true owner. Under Article 65 of the Limitation Act, burden is on the*

*defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed.*

*Where possession could be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all.*

15. *An occupation of reality is inconsistent with the right of the true owner. Where a person possesses property in a manner in which he is not entitled to possess it, and without anything to show*

*that he possesses it otherwise than an owner (that is, with the intention of excluding all persons from it, including the rightful owner), he is in adverse possession of it. Thus, if A is in possession of a field of B's, he is in adverse possession of it unless there is something to show that his possession is consistent with a recognition of B's title. (See Ward v. Carttar (1866) LR 1 Eq.29). Adverse possession is of two kinds, according as it was adverse from the beginning, or has become so subsequently. Thus, if a mere trespasser takes possession of A's property, and retains it against him, his possession is adverse ab initio. But if A grants a lease of land to B, or B obtains possession of the land as A's bailiff, or guardian, or trustee, his possession can only become adverse by some change in his position. Adverse possession not only entitled the adverse possessor, like every other possessor, to be protected in his possession against all who cannot show a better title, but also, if the adverse possessor remains in possession for a certain period of time produces the effect either of barring the right of the true owner, and thus converting the possessor into the owner, or of depriving the true owner of his right of action to recover his property and this although the true owner is ignorant of the adverse possessor being in occupation.*

16.     xxx xxx xxx

17.     *According to Pollock, "In common speech a man is said to be in possession of anything of which he has the apparent control or from the use*

*of which he has the apparent powers of excluding others".*

18 & 19                   xxx xxx xxx

20.     *It is well recognized proposition in law that mere possession however long does not necessarily means that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action."*

(ii) In ***Chatti Konatri Rao and others vs. Palle Venkata Subba Rao, (2010) 14 SCC 316***, the Hon'ble Apex Court further held as under:

*"13. What facts are required to prove adverse possession have succinctly been enunciated by this Court in the case of [Karnataka Board of Wakf vs. Government of India and Ors.](#) (2004) 10 SCC 779. It has also been observed that a person*

*pleading adverse possession has no equities in his favour and since such a person is trying to defeat the rights of the true owner, it is for him to clearly plead and establish necessary facts to establish his adverse possession. Paragraph 11 of the judgment which is relevant for the purpose reads as follows:*

*"11. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See [S.M. Karim v. Bibi Sakina AIR 1964 SC 1254](#), [Parsinni v. Sukhi \(1993\) 4 SCC 375](#) and [D.N. Venkatarayappa v. State of](#)*

*Karnataka* (1997) 7 SCC 567) Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. [[Mahesh Chand Sharma \(Dr.\) v. Raj Kumari Sharma](#)]

14. In view of the several authorities of this Court, few whereof have been [referred above](#), what can safely be said that mere possession however long does not necessarily mean that it is adverse to the true owner. It means hostile possession which is expressly or impliedly in denial of the title of the true owner and in order to constitute adverse possession the possession must be adequate in continuity, in publicity and in extent so as to show

*that it is adverse to the true owner. The possession must be open and hostile enough so that it is known by the parties interested in the property. The plaintiff is bound to prove his title as also possession within 12 years and once the plaintiff proves his title, the burden shifts on the defendant to establish that he has perfected his title by adverse possession. Claim by adverse possession has two basic elements i.e. the possession of the defendant should be adverse to the plaintiff and the defendant must continue to remain in possession for a period of 12 years thereafter.*

15. *Animus possidendi as is well known a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until possessor holds property adverse to the title of the true owner for the said purpose. The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and possession was open and undisturbed. A person pleading adverse possession has no equities in his favour as he is trying to defeat the rights of the true owner and, hence, it is for him to clearly plead and establish all facts necessary to establish adverse possession. The courts always take unkind view towards statutes of limitation overriding property rights. Plea of adverse possession is not a pure question of law but a blended one of fact and law.”*

21. The Hon'ble Supreme Court in its various decisions has held that when there are concurrent findings of fact, the High Courts should not interfere in those findings until and unless those are perverse or without any evidence. In the present case plea as set up by the defendant was required to be proved by the defendant, however, he has failed to do so. Therefore, no relief can be granted to him in the absence of such plea.

22. Interestingly, the defendant has set up the plea that he has been in possession of the suit land since 15.07.1990 and he had constructed the house in dispute in 1991 which is totally contrary to the record as placed on the case file. On the one hand he has set-up the plea that after purchasing the land he has constructed the house and on the other hand he has set up the plea of adverse possession.

23. The plea of title and adverse possession are mutually destructive as has been held by the Hon'ble Apex Court in ***Narasamma and others vs. A. Krishnappa (dead) through Legal Representatives, (2020) 15 SCC 218:***

“33. In Karnataka Board of Wakf case case, it has been clearly set out that a plaintiff filing a title

over the property must specifically plead it. When such a plea of adverse possession is projected, it is inherent in the nature of it that someone else is the owner of the property. In that context, it was observed in para 12 that "...the pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced."

24. This Court also in case titled as ***Surinder Prasad and another vs. Madhur Green and another, 2019(1) Civil Court Case, 182*** held as under:

*"9. At the outset, it may be observed that the defendants had even raised the plea of adverse possession and obviously they acknowledged and attorned to the title of the plaintiff. It is more than settled that whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property. The pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced."*

25. The defendant has not placed on record in to show and substantiate his plea that he purchased the portion of the suit land from Shri Shakti Chand and thereafter he raised the construction over the suit land. Record reveals that earlier the suit land was in the ownership of the Government. Therefore, the plea of purchase by the defendant from Shri Shakti Chand is

demolished. The plea of the defendant that the Divisional Commissioner could not have conferred proprietary right on the plaintiff cannot be accepted in the absence of any challenge or counter claim in the present proceedings. The suit had been filed by the plaintiff for vacant possession and in the absence of any counter claim challenging the order of Divisional Commissioner no relief can be granted to the defendant. Learned Courts below have concurrently come to the conclusion that on the basis of title the plaintiff is entitled for vacant possession of the suit property which is in illegal possession of the defendant. The defendant has failed to prove his title over the suit property. Therefore, the judgments and decrees of vacant possession as passed by the learned trial Court and affirmed by the first appellate Court are legal, valid and perfect and not call for any interference by this Court that too in regular second appeal.

26. In the present case, there are concurrent findings of fact rendered by the learned Courts below and the scope of interference in the concurrent findings of fact, as per the various judgments of the Hon'ble Apex Court, is very narrow and limited. The Hon'ble Apex Court has held in its various decisions that the High Court cannot re-appreciate the evidence to substitute its

own view for a plausible finding of fact arrived at by the first appellate court.

27. Reference in this regard is made to the judgment of the Hon'ble Apex Court in ***Navaneethammal vs. Arjuna Chetty AIR 1996 SC 3521***, wherein it has been held as under:

*“10. This Court, time without number, pointed out that interference with the concurrent findings of the courts below by the High Court under Section 100 CPC must be avoided unless warranted by compelling reasons. In any case, the High Court is not expected to re-appreciating the evidence just to replace the findings for the lower courts.*

*20. In our considered view the lower Appellate Court has fairly appreciated the evidence in the above background and has reached the conclusion that the suit was not barred by Limitation. Even assuming that another view is possible on a re-appreciation of the same evidence, that should not have been done by the High Court as it cannot be said that the view taken by the First Appellate Court was based on no material.”*

28. Similarly, the Hon'ble Apex Court in ***Kshitish Chandra Purkait vs. Santosh Kumar Purkait and others (1997) 5 SCC 438*** has held as under:

*“10. We would only add that (a) it is the duty cast upon the High Court to formalate the substantial question of law involved in the case even at the initial stage; and (b) that in (exceptional) cases, at a later point of time, when the Court exercises its jurisdiction under the proviso to sub-section (5) of*

*Section 100 C.P.C in formulating the substantial question of law, the opposite party should be put on notice thereon and should be given a fair or proper opportunity to meet the point. Proceeding to hear the appeal without formulating the substantial question of law involved in the appeal is illegal and is an abnegation or abdication of the duty cast on Court; and even after the formulation of the substantial question of law, if a fair or proper opportunity is not afforded to the opposite side, it will amount to denial of natural justice. The above parameters within which the High Court has to exercise its jurisdiction under Section 100 CPC should always be borne in mind. We are sorry to state that the above aspects are seldom borne in mind in many cases and second appeals are entertained and/or disposed of, without conforming to the above discipline.*

*11. The guidelines to determine as to what is a "substantial question of law" within the meaning of Section 100 CPC, have been laid down by this Court in a Constitution Bench decision in *Chunilal V. Mehta and Sons Ltd. v. Century Spg. and Mfg. Co. Ltd* There is also a later decision of this Court in *Mahindra and Mahindra Ltd. v. Union of India*<sup>3</sup>. It is unnecessary to deal at length with that aspect any further."*

29. In ***Kondiba Dagadu Kadam vs. Savitribai Sopan Gujar and others, AIR 1999 SC 2213***, the Hon'ble Supreme Court has held as under:

*"5. It is not within the domain of the High court to investigate the grounds on which the findings were*

*arrived at, by the last court of fact, being the first appellate Court. It is true that the lower appellate Court should not ordinarily reject witnesses accepted by the trial court, in respect of credibility but even where it has rejected the witnesses accepted by the trial Court, the same is no ground for interference in second appeal when it is found that the appellate Court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate Court unless it is found that the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the apex Court, or was based upon inadmissible evidence or arrived at without evidence.”*

30. In ***Civil Appeal No.5131 of 2025, titled as R. Nagaraj (dead) through LRs and another vs. Rajmani and others***, the Hon'ble Supreme Court held as under”

*“7. By the impugned judgment and order and without answering anything on the substantial questions of law framed/formulated, absolutely in a casual manner, the High Court has allowed the Second Appeal and has set aside the concurrent findings recorded by both the courts below and thereafter has remanded the matter to the learned trial Court*

*permitting the original plaintiff to amend the plaint and pray for fixation of the boundary.*

*9. Having heard learned counsel for the respective parties and having gone through the impugned judgment and order passed by the High Court, we are constrained to observe that the manner in which the High Court has dealt with the Second Appeal under Section 100 of the CPC is not appreciable at all. From the impugned judgment and order passed by the High Court, it appears that the High Court has exercised the powers as if the High Court was deciding the Writ Petition under Article 226 of the Constitution of India. The High Court has not appreciated at all that the High Court was deciding the Second Appeal under Section 100 of the CPC and that too against the concurrent findings of fact by both the courts below, which were, as such, on appreciation of evidence on record. Under the circumstances, the impugned judgment and order passed by the High Court is unsustainable.*

*11. At the cost of repetition, it is observed that the High Court was dealing with the Second Appeal under Section 100 CPC and the concurrent findings recorded by both the courts below which were on appreciation of evidence on record. Neither at the stage of deciding the suit nor even before the first Appellate Court even such a prayer was made to amend the plaint, which is now permitted by the High Court, despite the fact that earlier in the suit during the course of trial, the plaint was amended. Under the circumstances also, the impugned judgment and order passed by the High Court is unsustainable.”*

31. In the present case, the findings as rendered by the Courts below are findings of fact which do not call for any interference. There is no question of law much less any substantial question of law.

32. Consequently, the present appeal being devoid of any merit deserves to be dismissed and the same is accordingly dismissed along with pending application(s), if any.

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

**February 27, 2026**  
(vt)