

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 258 of 2011

Reserved on: 19.12.2025

Date of Decision: 02.01.2026

Nanak Singh (deceased) through LRs

....Appellants

Versus

Mast Ram (deceased) through LRs

....Respondents

Coram

Hon'ble Mr Justice Romesh Verma, Judge.

Whether approved for reporting?

For the Appellants : **Mr. Sanjeev Kuthiala, Sr. Advocate with Ms. Sana Rana, Advocate.**

For the Respondents : **Mr. Vijay Chaudhary, Advocate for respondent No.1.**

Mr. Rajneesh K. Lal, Advocate, for respondent No.2.

Ms. Ambika Kotwal, Advocate, for respondent No.3

Whether reporters of Local Papers may be allowed to see the judgment?

Romesh Verma, Judge

The present Regular Second Appeal arises out of the judgment as passed by the learned Presiding Officer Fast Track Court, Mandi, District Mandi, H.P. in Civil Appeal No. 102 of 2009, dated 16.03.2011, whereby the appeal filed by the appellant/defendant was dismissed and the judgment and decree as passed by the learned Civil Judge (Senior Division), Court No.2, Mandi, District Mandi, H.P. dated 31.7.07.2009 was affirmed.

2. The facts necessary for adjudication are that the present respondent No.1/plaintiff filed a suit for declaration and injunction in the Court of learned Civil Judge (Senior Division) Court No.2, Mandi, District Mandi. It was averred in the plaint that the land comprised in Khewat/Khatauni No. 171 min/200 min, khasra No.490, measuring 1-0-8 bighas situated in village Ner, H. No.222, Illaqa Balh, Tehsil Sadar, District Mandi, H.P. (hereinafter referred to as the suit land) was owned by Smt. Rajender Kaur w/o Sh. Gopal Singh, who was the mother of defendant No.1 Sh. Nanak

Singh. It was averred in the plaint that out of the suit land, the land measuring 0-5-5 bighas was purchased by defendant No.2 Sh. Jounga Ram from Smt. Rajender Kaur and mutation to that effect was also attested in favour of defendant No.2 on 31.7.1986. It was averred that defendant No.2 purchased land measuring 0-5-5 bighas out of khasra No.490 on the basis of tatima which has been shown as khasra No.490/1. It was stated in the plaint that plaintiff also purchased land measuring 0-8-0 bighas from Smt. Rajender Kaur vide registered sale deed dated 05.11.1986, on the basis of the spot tatima out of khasra No.490 which has been described as khasra No.490/2 in the spot map which was attached with the registered sale deed. The original copy of the sale deed was also appended with the plaint. It was averred that while preparing spot map of khasra No. 490/1, 490/2 and 490/3, the dimensions of the area in question i.e length and width of the area have wrongly been shown and the length and breadth as shown in tatima did not tally with actual area which has been purchased by the plaintiff

from Smt. Rajender Kaur, the predecessor in interest of defendant No.1.

3. It was averred in the plaint that the dimensions of tatima of khasra No. 490/1, exceeded to the actual area of the land purchased by defendant No.2. The area of land described as khasra No.490/2 ought to have been 0-8-0 bighas but on calculation on the basis of tatima attached with sale deed this area was found to be 0-4-16 bighas. Therefore, on account of preparation of wrong revenue record/tatima the plaintiff is suffering loss of 0-3-4 bighas of land on the spot. The plaintiff is in possession of 0-8-0 bighas of land. It was stated that plaintiff is in peaceful possession of the land measuring 0-8-0 bighas and on the basis of wrong preparation of tatima, the defendants are interfering in the peaceful possession and they are also trying to disturb the possession of the plaintiff. It was prayed that the tatima of the suit land attached with the sale deed dated 05.11.1986 showing the dimensions of khasra No. 490/1, 490/2 and 490/3 be declared as null and void and the tatima attached with the mutation may also

be declared null and void and the spot map may be declared liable to be corrected so that actual area of the land purchased by the plaintiff may tally with the area shown in the tatima and on the spot. Further decree of Permanent Prohibitory Injunction was sought by the plaintiff and in the alternate it was prayed that in case, defendants succeeded in dispossessing the plaintiff either by raising the construction beyond their share which may prove to be an encroachment over khasra No.1065/490, the same may be ordered to be demolished and the plaintiff may be delivered vacant possession of the same by passing a decree for possession.

4. The suit was contested by filing written statement on behalf of the defendants, wherein preliminary objections of *res-judicata*, estoppel, limitation and the suit barred by the provisions of Order 2 Rule 2 and Order 23 Rule 2(iv)(b) of C.P.C. were taken. On merits, all the allegations as levelled in the plaint were denied. It was denied that while preparing the spot map of khasra Nos. 490/1, 490/2 and 490/3, the dimensions of these khasra Nos. have been wrongly shown. It was stated in the written statement that it

is only Smt. Rajender Kaur, the predecessor in interest of defendant No.1 who could have questioned the validity of the tatima of the sale deed in favour of defendant No.2 and as the plaintiff has purchased the land subsequently out of the land of khasra No. 490, the dispute could only be with the vendor and the plaintiff. All the allegations as levelled in the plaint were denied.

5. The plaintiff filed replication to the written statement denying the averments made therein and that of the plaint were reiterated. The learned Civil Judge (Senior Division), Court No.2, Mandi, District Mandi on 08.06.2006 framed the following issues:

1. Whether the tatima of the suit land attached with sale deed dated 5.11.1986 is null and void as alleged? OPP
2. Whether the plaintiff is entitled for the relief of permanent prohibitory injunction, as prayed? OPP
3. Whether the plaintiff in the alternative is entitled for the relief of mandatory injunction, as prayed for? OPP
4. Whether the suit is barred by principle of constructive *res-judicata*, as alleged? OPD

5. Whether the present suit is bared by provision of Order 2 Rule 2 C.P.C as alleged? OPD
6. Whether the present suit is barred by provision of order 23 Rule 2 (4)(b)CPC, as alleged? OPD
7. Whether the plaintiff is estopped to file the present suit by his own act and conduct, as alleged? OPD
8. Whether the suit is barred by limitation, as alleged? OPD
9. Relief.

6. After hearing the respective parties, learned Civil Judge (Senior Division), Court No.2 decreed the suit as filed by the plaintiff and it was held that the plaintiff has purchased 0-8-0 bighas of the land and the same is also reflected in the jamabandi but the spot map has not been correctly prepared so as to show the plot of 0-8-0 bighas. It was held that plaintiff is entitled to get deficiency from the vendor through defendant No.1 being his legal heir from khasra No.1066/490. It was held that deficiency has been found and pointed out in document Ext.PW3/A and the same shall form part of the decree. Further, decree for Permanent

Prohibitory Injunction was also granted in favour of plaintiff restraining defendant No.1 from denying/alleging that plaintiff has not purchased 0-8-0 bighas of the land. As far as the prayer for mandatory injunction is concerned the same was declined by the learned Civil Judge (Senior Division).Court No.2, Mandi,District Mandi, H.P.

7. Feeling aggrieved, defendant No.1 Nanak Singh preferred an appeal under Section 96 of C.P.C read with Section 21 of H.P. Courts Act in the Court of learned Presiding Officer, Fast Track Court, Mandi, District Mandi, who vide its judgment and decree dated 16.03.2011 affirmed the judgment of the learned Civil Judge(Senior Division) and appeal filed by the defendant No.1 was ordered to be dismissed.

8. Feeling aggrieved by the judgments and decrees as passed by the learned Civil Judge(Senior Division), Court No.2, Mandi, District Mandi and Presiding Officer, Fast Track Court,

Mandi, District Mandi, dated 16.03.2011, defendant No.1/appellant has filed the present regular second appeal.

9. This Court vide its judgment dated 12.09.2019 accepted the appeal preferred by the appellant and the matter was remanded back to the learned Civil Judge (Senior Division). This Court had allowed the application filed by Sh. Karam Singh son of Sheenu Ram,r/o Village and Post Office Ner , Tehsil Sadar, District Mandi, H.P. for his impleadment as a party respondent. The said order/judgment as passed by this Court on 12.09.2019 was assailed by plaintiff/respondent No.1 before the Hon'ble Supreme Court and the same was allowed by the Hon'ble Apex Court vide its judgment dated 23.11.2022. The judgment as passed by this Court in the Regular Second Appeal was set aside and the order allowing the application under Order 1 Rule 10 C.P.C was also set aside. It was ordered that the regular second appeal and the application under Order 1 Rule 10 C.P.C should be considered afresh by this Court.

10. The present appeal was admitted on 27.04.2012 on the following substantial questions of law:

- 1.Whether both the learned courts below have misread and mis-appreciated the pleadings of the parties as also the evidence on record, both oral as well as documentary, especially the statements of PW-1 to PW-3, DW-1, DW-2, Exts. PA to PH, PW-3/A, DW-1/A to DW-1/K and whether on account of such mis-reading and mis-appreciation, the impugned judgment is vitiated?
2. Whether in a boundary dispute, it was incumbent upon the courts below to have acted in accordance with the provisions of Order 26 Rule 9 and appointed a Court Commissioner and whether failure to do so has vitiated the findings as also the conclusion arrived at by both the courts below and whether the present case entails a remand for the purpose of revenue expert report for the purpose of adjudication of the lis?
3. Whether a unilateral report made by a retired Patwari in the absence of the Musabi, revenue record and without following the procedure envisaged under the H.P. Land Revenue Act and the H.P. Financial Commission's Standing Orders and the H.P. High Court Rules and Orders, could be made a basis for determination of the lis and whether the impugned findings are bad in law on this account?

11. I have heard Sh. Sanjeev Kuthiala, learned Senior Advocate assisted by Ms. Sana Rana Advocate for the appellant, Sh. Vijay Chaudhary, Advocate for respondent No.1 and Sh. Rajneesh K. Lal, Advocate, for respondent No.2 and Ms. Ambika Kotwal, Advocate for respondent No.3, newly added respondent.

12. Learned Senior counsel for the appellants stated that the judgments and decrees as passed by the learned Courts below suffer from infirmity and perversity as real point of controversy has not been considered and determined by the Courts below. Therefore, judgments and decrees as passed by the Courts below are required to be set-aside and the suit as filed by the plaintiff/respondent is required to be dismissed.

13. On the other hand, Sh. Vijay Chaudhary, learned Counsel for respondent No.1/plaintiff has defended the judgments and decrees as passed by the courts below and has argued that both the Courts, after appreciation of oral as well as documentary evidence placed on record, have rightly passed the judgments and

decrees and no interference of any kind is required in the same that too in a Second Appeal. Mr. Rajneesh K. Lal, learned counsel for respondent No.2 argued that the dispute qua the land in question is *inter se* between the plaintiff/respondent No.1 and defendant/ appellant. Therefore, his client has got no direct role in the present proceedings.

14. Ms. Ambika Kotwal, learned counsel for respondent No.3 has submitted that her client is owner in possession of Khasra No. 490/3 which was purchased on 03.05.2005 vide sale deed from the appellant. She states that since her client is bonafide purchaser, therefore, no relief can be granted to plaintiff/respondent No.1.

15. In the present proceedings, from the perusal of records, it emanates that the plaintiff had purchased the land vide the sale deed dated 05.11.1986 Ext. PF. The said sale deed was executed by Smt. Rajender Kaur wife of Gopal Singh, r/o Ner Tehsil Sadar, District Mandi in favour of Sh. Mast Ram for a sum

of Rs.11,000/- qua land comprised in Khasra No. 490/2 measuring 0-8-0 bighas, situated at Mauja Ner, Tehsil Sadar, District Mandi. Perusal of the copy of the sale deed unequivocally demonstrates that the plaintiff had purchased an area out of suit land measuring 0-8-0 bighas from the predecessor in interest of defendant No.1, namely Smt. Rajender Kaur, wife of Sh. Gopal Singh on 05.11.1986. Though no dimensions of any kind have been reflected in the sale deed but it clearly shows that plaintiff had purchased total area consisting 0-8-0 bighas from late Smt. Rajender Kaur. However, the dispute arose when the calculation of the area as shown in tatima Ext. PG attached with the sale deed described by Khasra No. 490/2 showed total area to be 0-4-16 bighas. Meaning thereby, on account of this fact there is short fall in the area of the plaintiff as the land in the tatima depicts area comprising 0-4-16 bigha instead of 0-8-0 bigha. The tatima Ext.PG is showing the total area of the land to the extent of 0-4-16 bighas instead of 0-8-0 bighas. There is a clear variation/discrepancy in the tatima as has been exhibited in Ext.PG in the record of the case file. The entire

controversy arose on account of Ext.PG where the dimensions of the suit land have not been clearly depicted. Instead of showing the suit land to be 0-8-0 bighas, the dimensions of the same have been reduced to 0-4-16 bighas. Once, it is found that the calculation as shown in the tatima Ext.PG is showing the suit land to be less, therefore, the Courts below have rightly passed the judgments and decrees in favour of the plaintiff. The sale deed Ext. PF which is part of the record has clearly spelt the extent of the area which was purchased by the plaintiff for a sum of Rs.11,000/- from Smt. Rajender Kaur wife of Gopal Singh on 05.11.1986.

16. In order to corroborate its case, the plaintiff entered into the witness box as PW-1 and he has categorically submitted in his statement that he had purchased the land measuring 0-8-0 bighas from the mother of the defendant. After its purchase, he occupied the suit land on the spot. He further stated that prior to sale deed, the mother of defendant No.1 sold 0-5-5 bighas of the land to defendant No.2. He stated that he is illiterate and the

Patwari had told him that he has prepared tatima of 0-8-0 bighas. However, on the contrary, he had prepared wrong tatima. PW-1 stated that on the basis of wrong tatima on papers, he had got 0-3-4 bighas less land, however, he is entitled for the rectification of the revenue record/tatima in accordance with the sale deed which was executed by the mother of defendant No.1 in his favour.

17. Plaintiff has examined PW-3 Dandu Ram, who was the retired Kanungo. He has stated that as per the Registry the plaintiff had purchased 0-8-0 bighas of land from Smt. Rajender Kaur. He has also stated that wrong tatima was prepared which was appended with the sale deed.

18. The learned Courts below have rightly taken into consideration the fact that on account of preparation of the wrong tatima an error had crept and there was a deficiency of the land which was required to be rectified by the Courts and the same has been done. The learned trial Court has rightly held that deficiency

has been found and pointed out in the document Ext. PW3/A and the said document has been formed part of the decree.

19. There are concurrent findings of fact rendered by the Courts below holding that tatima Ext.PG was wrongly depicting the area which ought to have been shown as 0-8-0 bighas. The dispute arose when the calculation of the area of the land was done and in tatima Ext.PG the land was found to be 0-4-16 bigha. Both the Courts below have rightly appreciated the controversy in question.

20. During the pendency of the present appeal, this Court vide order dated 03.06.2014, appointed Tehsildar, Sadar, Mandi as a Local Commissioner, to demarcate Khasra No. 490 in whole and to demarcate Khasra No. 490/1, 490/2 and 490/3 as per the instructions of the Financial Commissioner issued for demarcation of the land. In pursuance to the order dated 03.06.2014, the report of the Local Commissioner is on the Court file. The said report was prepared by Tehsildar Balh and the

demarcation was conducted on 10.06.2014. As per the report, it was found that over Khasra No.490/1 Sh. Jounga-defendant No.2 is in occupation of 0-6-0 bighas, over area khasra No.490/2. Mast Ram, the plaintiff, is in possession of only 0-4-10 bighas instead of 0-8-0 bighas and as far as Khasra No.490/3 is concerned, Sheenu is in possession of only 0-4-0 bighas instead of 0-7-3 bighas. The report as submitted by the Tehsildar is in consonance with the instructions of Financial Commissioner issued by the State for carrying out the demarcation and there is no infirmity in the same. Surprisingly, the appellants have filed the objections to the said report, though there are no adverse findings against them however, after perusing the same, this Court considers that the report is valid and legal and is in consonance with the Rules framed for the demarcation of the land in the State of H.P. Objections as filed by the appellant are not sustainable and liable to be rejected.

21. During the pendency of the appeal, an application under Order 1 Rule 10 C.P.C was filed by one Sh. Sheenu Ram son of Telhu Ram,r/o village Ner Chowk-III Balh, bearing CMP No. 13669

of 2014. Notices were issued in the said application. The said application was listed before this Court on 08.10.2014, when time was granted to non applicants to file the reply to the said CMP. On 02.09.2015, learned counsel for the applicant submitted that said Sh. Sheenu Ram had died and necessary steps to implead his legal representatives are required to be taken in accordance with law. The said application was filed by Sh. Sheenu Ram, which was duly supported by an affidavit of his son Sh. Karam Singh. Subsequently, fresh application bearing CMP No. 11441 of 2015 under the provisions of Order 1 Rule 10 read with Section 151 C.P.C was filed by Karam Singh son of Sheenu Ram to be impleaded as party respondent. This Court vide its order dated 12.09.2019 allowed the said application and remanded the Regular Second Appeal to the trial Court, however, the Hon'ble Apex Court vide its judgment and order dated 23.11.2022 set-aside the order of remand passed by this Court and directed this Court to consider the appeal and the application filed for implement under Order 1 Rule 10 of C.P.C afresh. The application bearing CMP No. 11441 of

2015 was listed before this Court on 14.11.2025 for consideration and after hearing the respective parties, the application was allowed and Karam Singh was ordered to be arrayed as respondent No.3 in the present proceedings.

22. It has been submitted by the learned counsel for respondent No.3 that the rights of her client cannot be disturbed in the present proceedings, especially in view of the report of the Local Commissioner dated 15.07.2014. She submits that her client came to know about the pendency of present proceedings when Tehsildar, came on the spot on 03.07.2014 to demarcate the land on the basis of the order passed by this Court on 03.06.2014. It is only, thereafter, respondent No.3 came to know about the present case and thereafter they moved the necessary application for their impleadment.

23. From the perusal of the record, it is clear that Mast Ram-respondent No.1 filed a suit for declaration and injunction on 23.05.2003 in the Court of learned Civil Judge (Sr. Division)

Court No.2, Mandi, District Mandi H.P. Dasti summons were issued for the service of defendant No.1-the present appellant, returnable for 26.05.2003. On 26.05.2003, learned counsel appeared for the defendant and sought time to file written statement. Meaning thereby, on 26.05.2003, defendant No.1/present appellant was duly served in the matter. In order to defeat the rights of the plaintiff, he executed the sale deed on 03.05.2005 in favour of Sheenu Ram, the predecessor of respondent No.3, intentionally and willfully despite the fact that the suit pertaining to the suit land was pending in the court of learned Civil Judge (Sr. Division) Court No.2, Mandi.

24. In the plaint, it has been specifically averred by the plaintiff that while preparing spot map of khasra No. 490/1, 490/2 and 490/3, it has wrongly shown the dimensions i.e length and breadth of these khasra numbers. It has been averred in the plaint that length and breadth as shown in the tatima do not tally with the actual area which has been purchased by the plaintiff and defendant No.2 from Smt. Rajinder Kaur-the predecessor-in-

interest of defendant No.1/appellant. Further, it has been averred that unsold portion of the suit land which has been described as khasra No. 490/3 does not tally with the area of the land. Dimensions of tatima of khasra No. 490/1 exceeded to the actual area of the land purchased by defendant No.2. The area of the land described as Khasra No. 490/2 ought to have been 0-8-0 bighas but on calculation on the basis of tatima attached with the sale deed, its area was found to be 0-4-16 bighas. Due to wrong preparation of tatima, the plaintiff has suffered loss of 0-3-4 bighas of land, though, on the spot, the plaintiff is in possession of 0-8-0 bighas of land. A prayer was made seeking decree for declaration that tatima of the suit land attached with the sale deed showing the dimensions of Khasra No. 490/1,490/2 and 490/3 be declared as null and void and the tatima attached with the mutation also be declared as null and void.

25. Defendant No.1-appellant filed the written statement on 23.09.2003, whereby simpliciter denial was pleaded in the written statement and the averments as made in the plaint were

refuted and it was prayed that suit filed by the plaintiff deserves to be dismissed.

26. In order to frustrate the right of the plaintiff, defendant No.1 executed a sale deed in favour of Sheenu Ram on 03.05.2005 despite the pendency of the suit qua the suit land. Though it was very specific case of the plaintiff that on the basis of wrong tatima, his land has been shown less in the revenue record, despite that fact, defendant No.1 sold khasra No 490/3 comprising land 0-7-3 bighas. This Court is of the opinion that the said transaction is governed by principle of lis pendens as envisaged under Section 52 of the Transfer of Property Act. By virtue of principle of lis pendens, any transaction which takes place during the pendency of the case is governed by the ultimate judgment passed by the Court. The conduct of defendant No.1 is not above board and in order to defeat the rights of the plaintiff, he intentionally and willfully sold the part of the suit land i.e Khasra No. 490/3 to Sheenu Ram, the predecessor in interest of respondent No.3.

27. In the present proceedings, no relief can be granted to respondent No.3. The suit was instituted by the plaintiff Mast Ram against defendant No.1/appellant and defendant No.2 Jounga Ram/respondent No.2. The suit preferred by the plaintiff was decreed and the said findings were affirmed by the learned Presiding Officer. The suit as preferred has to be either decreed or rejected but in the present proceedings, no relief can be granted to respondent No.3. In case, respondent No.3 is aggrieved by any action or inaction on the part of defendant No.1, in that event, he can institute appropriate proceedings for the redressal of his grievance in the competent court of law. Respondent No.3 has failed to challenge the judgments and decrees as passed by the Courts below, therefore, in the present proceedings, no relief can be granted to him.

28. The Hon'ble Apex Court in its various decisions have laid down the parameters for dealing with the cases under the provisions of Section 100 of C.P.C. Section 100 of C.P.C. reads as follows:

“100. Second appeal.—(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed *ex parte*.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law,

not formulated by it, if it is satisfied that the case involves such question.]”

29. It is thus clear that under Section 100 C.P.C., this Court cannot interfere with the findings of fact arrived at by the first Appellate Court which is the final Court of facts except in such cases where such findings are erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Hon'ble Apex Court or based upon inadmissible evidence or without evidence. The High Court in the Second Appeal can interfere with the findings of the trial Court as well as the first appellate Court, as the case may be, when such findings are recorded without proper appreciation of the documents or failure to follow the decisions of Hon'ble Apex Court and acted on assumption not supported by evidence.

30. It is settled law that High Court can go into the findings of the fact only if first appellate court has not considered

the law and evidence or has considered the inadmissible evidence or different evidence.

31. Section 103 Code of Civil Procedure reads as under:-

“103. Power of High Court to determine issue of fact.—In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal,—

(a) which has not been determined by the lower Appellate Court or both by the Court of first instance and the lower Appellate Court, or
(b) which has been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred to in section 100.”

32. A perusal of Section 103 CPC reveals that it permits the High Court to go into the facts only when the Courts below have not determined or rendered any findings on a crucial fact, despite evidence already available on record or after deciding the substantial questions of law, the facts of a particular case demand re-determination.

33. The Hon'ble Apex Court has repeatedly held that the concurrent findings of fact cannot be disturbed in a routine manner until and unless judgments and decrees passed by the courts below are perverse and of no evidence.

34. In the present case, there are concurrent findings of fact rendered by the learned Courts below and the scope of interference in the concurrent finding 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.

35. 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.”

36. 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 formulate 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.² There is also a later decision of this Court in Mahindra and Mahindra Ltd. v. Union of India³. It is unnecessary to deal at length with that aspect any further."

37. ***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.”

38. In the present case also, there are concurrent findings of fact rendered by the Courts below which do not call for interference. The substantial questions of law are answered accordingly. No other point urged by the respective counsel for the parties.

39. Consequently, there is no merit in the appeal, therefore, the same is dismissed. No order as to costs.

(Romesh Verma)
Judge

2nd January, 2026 (veena)