IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.58 of 2019
Reserved on:25.02.2026
Decided on: 02.03.2026

Ramesh Kalia & another .Appellants

Versus

Mohammad Hameed ...Respondent

Coram

Hon'ble Mr. Justice Romesh Verma, Judge

Whether approved for reporting?

For the appellants:	Mr. Nimish Gupta, Advocate.
For the respondent:	Mr. Peeyush Verma, Senior Advocate with Ms. Ambika Thakur, Advocate.

Romesh Verma, Judge

The present regular second appeal arises out of judgment and decree dated 1st October, 2018, as passed by the learned District Judge, Chamba Division, Chamba, H.P., whereby the appeal preferred by the plaintiffs/appellants was dismissed and the judgment and decree as passed by learned Senior Civil Judge, Chamba, District Chamba, H.P. dated 14th May, 2018 was affirmed.

2. Brief facts, of the case are that the plaintiffs/appellants preferred civil suit in the Court of learned Senior Civil Judge, Chamba, for permanent prohibitory injunction. It was averred in the plaint that the plaintiffs are joint owner-in-possession of the land/property comprised in Khata-Khatoni

No.693, 765, Khasra Nos.1958, 1959, 1960, 1961, 1962, 1963, 1966, 1969 and 1973, measuring 393-8 square yards, situated at Mauza Chamba town, Tehsil and District Chamba, H.P. It was averred that there exists an old boundary wall belonging to the plaintiffs over Khasra No.1958, 1959 and 1960 and the plaintiffs and other co-sharers have constructed their houses within the said boundary wall about 15-16 years ago and they are peacefully enjoying the possession thereof. It was averred that adjoining to the boundary wall belonging to the plaintiffs over the suit land, there exists Khasra No.1954, which is owned and possessed by the defendant. Although, a two storied house is shown to be existing in the revenue record. However, at the spot there is no house and the land was being used by the defendant for keeping malba. On 2nd July, 2010, the defendant started removing the malba from land comprised in Khasra No.1954 and he started excavating the land beneath the boundary wall belonging to the plaintiffs. As per the case of the plaintiffs, though, the defendant was called upon not to excavate the land beneath the boundary wall as it will endanger the boundary, however, the defendant refused to oblige the plaintiffs. Therefore, a decree for permanent prohibitory injunction restraining the defendants from raising any type of construction over the boundary wall comprised over

Khasra Nos.1958, 1959 and 1960 and further from excavating the land beneath the said boundary wall in such a manner so as to damage the same out of total land/property comprised in Khasra Nos.1958, 1959, 1960, 1961, 1962, 1963, 1966, 1969 and 1973, measuring 393-08 square yards, situated at Mauza Chamba Town-II, Tehsil & District Chamba, H.P. be passed in favour of the plaintiffs.

3. The suit was contested by the defendant by raising preliminary objections with regard to maintainability, cause of action, locus standi, estoppel etc. On merits, it was stated in the written statement that there exists Khasra No.1954 owned by the defendant. Besides this other khasra No.1955 exists adjoining to the house of the plaintiffs comprised in Khasra Nos.1958, 1959, 1960, 1961, 1962, 1963, 1966, 1969 and 1973. It was stated in the written statement that the plaintiffs have started discharging water from their lintel through pipe over the back wall of the property of the defendant comprised in Khasra No.1954 and 1955 and due to this act of nuisance, the wall of the defendant is deteriorating and decaying day by day and other portion of the property is also being damaged. Further, it was averred that while raising constructions, the plaintiffs have not left any set back

towards the land of the defendant of their new construction. The defendant prayed for dismissal of the suit as filed by the plaintiffs.

4. Replication to the written statement was filed by the plaintiffs by reiterating the contents of the plaint.

5. Learned trial Court framed the issues on 24.11.2011, which read as under:

> 1. Whether the plaintiffs are entitled for injunction? OPP
> 2. Whether the suit of the plaintiffs is not maintainable in the present form? OPD
> 3. Whether the plaintiffs have no cause of action to file the present suit? OPD
> 4. Whether the plaintiffs are estopped by their own act and conduct to file the present suit? OPD

5. The parties were directed to adduce evidence in support of their contentions and after the conclusion of evidence, learned Senior Civil Judge, Chamba vide its judgment and decree dated 14th May, 2018, dismissed the suit as preferred by the plaintiffs/appellants.

6. Feeling dissatisfied, the plaintiffs/appellants preferred civil appeal under Section 96 of CPC in the Court of learned District Judge, Chamba on 18th June, 2018. Learned appellate

Court vide its judgment and decree dated 1st October, 2018, dismissed the appeal as preferred by the plaintiffs/appellants.

7. Still feeling aggrieved, the plaintiffs/appellants have approached this Court by filing regular second appeal.

8. The appeal was admitted on 25th February, 2019 on the following substantial questions of law:

> 1. Whether findings returned by learned courts below are perverse and contrary to facts and case and law applicable to the case?
> 2. Whether the evidence beyond the pleadings can be considered for deciding the controversy between the parties?

9. Mr. Nimish Gupta, learned counsel for the appellants, submits that the judgment and decree, as passed by the Courts below, is perverse and dehors the evidence which is liable to be quashed and set aside. It is contended that the Courts below have misread and mis-appreciated the oral as well as documentary evidence placed on record and have decided the matter in a slip shot manner.

10. On the other hand, Mr. Peeyush Verma, learned Senior Counsel, assisted by Ms. Ambika Thakur, Advocate, has defended the judgments and decrees as passed by the Courts below and contended that there are concurrent findings of fact

rendered by the Courts below which do not call for any interference and the Courts below have rightly decided the case against the plaintiffs and in favour of the defendant after perusal of record, evidence and submissions of respective counsel for the parties.

11. In the present case, the dispute revolves around the boundary wall which is alleged to be on the land of the respective parties. It is the case of the plaintiffs that the boundary wall is existing over Khasra Nos.1958, 1959 and 1960 and the plaintiffs and other co-sharers have constructed their houses within the said boundary wall about 15-16 years ago. It is contended that the defendant tried to excavate the land beneath the boundary wall in order to prejudice and create multiplicity of litigation.

12. In order to substantiate his case, plaintiff examined himself as PW-1 and filed his affidavit Ext. PW-1/A which is part of the record. In his deposition, he has stated that he and Ramesh Kalia are joint owner-in-possession of the suit land comprised in khata-khatoni Nos.693/765, Khasras No.1958, 1959, 1960, 1961, 1962, 1963, 1966, 1969 and 1973, measuring 393-08 square yards, situated at Mauza Chamba Town-II, Tehsil & District Chamba, H.P. It is averred in the examination-in-chief that there exists an old boundary wall over Khasra Nos.1958, 1959, 1960

and he, Ramesh Kalia and other co-sharers have constructed their houses. It has further been averred that adjoining to the boundary wall there exists Khasra No.1954, which is owned and possessed by the defendant. The defendant on 2nd July, 2010 started excavating the land beneath the boundary wall belonging to PW-1 and Ramesh Kalia. Though, he requested the defendant not to excavate the land, but being adamant, the defendant refused to budge to the request of the plaintiff. In the cross-examination, PW-1 has admitted that in order to identify the boundary wall, no demarcation was carried out over the suit land. He admitted that he did not apply for the appointment of Local Commissioner. He admitted that qua the said boundary wall an agreement entered into between the parties. He denied that boundary wall is over the land owned and possessed by the defendant. He admitted that over and above the said wall there is glaze of his house and the wall is about 10-11 feet and 20-20 feet.

13. In order to corroborate their case, the plaintiffs examined Sanjay Kumar, who had filed his affidavit Ext. PW-2/A. In his deposition he has stated that there exists an old boundary wall which belongs to the plaintiffs and the plaintiffs and their relatives have constructed their houses within the said boundary wall. On 08.07.2010, the defendant had engaged two labourers,

who were digging beneath the boundary wall of the plaintiffs and when the defendant was requested not to do so, he threatened the plaintiffs of dire consequences. In the cross-examination, he has admitted that glaze of the house of plaintiffs opens towards the boundary wall, but surprisingly he has admitted that he does not know over which khasra number this boundary wall has been erected.

14. Ext. PA and Ext. PB have been placed on record which are copies nakal jamabandi for the year 2005-06.

15. The defendant-Mohammad Hameed in order to rebut the case of the plaintiffs, examined himself as DW-1 and filed his affidavit as Ext. DW-1/A. He stated in his deposition that the plaintiff had allowed the outlet of water of his lintel towards the house and property of the defendant. He submitted that the plaintiffs had not left appropriate and proper setbacks while raising the construction. He further stated that he had also instituted a suit in the Court of Civil Judge(Senior Division), Chamba and the same was decided in his favour on 30th April 2014. He has further submitted that the boundary wall which is situated over the land owned by them, the plaintiffs have got no concern with the same.

16. In the cross-examination, DW-1 Mohammad Hameed has specifically denied that the boundary wall is situated over Khasra Nos.1958, 1959 and 1960. Self stated that the Wall is situated over Khasra Nos.1954 and 1955.

17. Manohar Singh, Photographer was examined as DW-2, who filed his affidavit Ext. DW-2/A.

18. DW-3. Jyoti Sethi, Record Keeper, D.C. Office Chamba was also examined. DW-5 is the statement of Anand Sagar. DW-6/A is the statement of Vijay Kumar. The defendant in order to corroborate his case has placed on record copy of agreement Ext.DW-5/B. This agreement was entered between Jitender Kalia and Mohammad Hameed defendant/respondent.

19. Perusal of the agreement shows that there is admission on behalf of plaintiff-Jitender Kalia that he has kept the glaze of his house adjacent to the boundary wall and in future, in case, on account of construction of wall, the glaze of the house is closed, in that event, he shall have no objection qua the same. The agreement was executed between the parties on 26th October, 1998 and the same has been admitted by DW-5 Anand Sagar and marginal witness DW-6 Vijay Kumar, who have stated that the said agreement was written at the instance of the parties

and after admitting the same, the parties put their signatures in presence of the witnesses.

20. Perusal of agreement shows that it is stipulated in the agreement that Jitender Kalia-plaintiff had started the construction work of his house and he has installed glaze/window towards the wall of the defendant and an undertaking was given by the plaintiff that in future, if the glaze of the plaintiff is closed, then, he will not raise any objection.

21. The defendant in order to substantiate his case has also placed on record copy of judgment and decree dated 30th April, 2014 (Ext. DY) qua the suit property. Learned Civil Judge (Senior Division), Chamba vide its judgment and decree dated 30th April, 2014 decreed the suit filed by the present defendant by passing a decree of permanent prohibitory injunction in favour of the defendant in the present case restraining the plaintiffs/appellants, their family members and servants from discharging dirty and filthy water towards the property of defendant comprised in Khata Khatoni No.775/857 min, Khasra No.1954 and 1955, measuring 55-05-00 Sq. yards, situated at Mohal Chamba Shehar 2nd Pargna Panjla, Tehsil and District Chamba.

22. It has been agreed by the plaintiff in his deposition that in order to ascertain the location of the boundary wall, he has not obtained any demarcation. The precise case between the parties, which is being contested for a long and considerable period, is that the plaintiffs are alleging that the boundary wall is existing over the land owned by them. However, in order to corroborate and substantiate their contentions, neither oral nor documentary evidence has been placed on record and the most important fact is that the ascertainment of the boundary wall has not been got done by taking the demarcation which could have clinched the controversy in question.

23. Courts below have rightly come to the conclusion that the plaintiffs have failed to establish on record that the boundary wall was situated in the suit land owned and possessed by them. As far as contention of the plaintiff that the defendant has started removing the 'malba' from beneath the old wall, the same has also remained without any proof save and except the bald statement of the plaintiffs. There is no material on record to establish that the defendant tried to dig the earth from beneath the old boundary wall thereby causing danger to the house of the plaintiff. Neither any oral nor any documentary evidence has been placed on record to substantiate the said contention. Therefore,

the plaintiff has miserably failed to prove his case beyond reasonable doubt. The important aspect of the matter is that neither the plaintiff himself has obtained the demarcation nor any attempt was made to get the demarcation done through the Court to the reasons best known to them. In case the plaintiffs were aggrieved and were of the opinion that boundary wall is situated over the land owned by them, in that event, the land in question, especially, the existence of boundary wall should have been ascertained which could have proved their case, but, in absence of doing so, adverse inference is required to be drawn. Both the Courts below have concurrently held against the plaintiffs. The findings as returned by the Courts below are legal, valid and sustainable. Therefore, both the substantial questions of law are answered accordingly.

24. The Hon'ble Apex Court has repeatedly held that the scope of interference by the High Courts especially while exercising power under Section 100 of the Code of Civil Procedure is very limited. The High Courts should not interfere in concurrent findings of facts until and unless the findings as returned by the Courts below are perverse or without any evidence.

25. In the present case, there are concurrent findings of facts 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.

26. 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.*
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> *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."*

27. 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.*
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> *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 India3. It is unnecessary to deal at length with that aspect any further."

28. 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 appellat 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."*

29. In ***Naresh and others vs. Hemant and others, (2022) 18 SCC 802***, the Hon'ble Supeme Court held as under:

> *"10. The High Court invoked the presumption without proper consideration and appreciation of the facts considered and dealt with by two courts holding by reasoned conclusions why the presumption stood rebutted on the facts. The High Court also committed an error of record by holding that there was no evidence that Trimbakrao Ingole alone had constructed the house, a finding patently contrary to the admission of PW-1 in his evidence. The fact that mutation also was done in the name of Trimbakrao Ingole alone which remain unchallenged at any time was also not noticed. The conclusion of the High Court that improper appreciation of evidence amounted to perversity is completely unsustainable. No finding has been arrived at that any evidence had been admitted contrary to the law or that a finding was based on no evidence only in which circumstance the High Court could have interfered in the second appeal.*
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> ***2.** The High Court therefore manifestly erred by interfering with the concurrent findings on facts by two courts below in exercise of powers under Section 100, Civil Procedure Code, a jurisdiction confined to substantial questions of law only. Merely because the High Court may have been of the opinion that the inferences and conclusions on the evidence were erroneous, and that another conclusion to its satisfaction could be drawn, cannot be justification for the High Court to have interfered.*

12. In Madamanchi Ramappa v. Muthaluru Bojappa, (1964) 2 SCR 673, this court with regard to the scope for interference in a second appeal with facts under Section 100 of the Civil Procedure Code observed as follows:

> *"12. ….The admissibility of evidence is no doubt a point of law, but once it is shown that the evidence on which courts of fact have acted was admissible and relevant, it is not open to a party feeling aggrieved by the findings recorded by the courts of fact to contend before the High Court in second appeal that the said evidence is not sufficient to justify the findings of fact in question. It has been always recognised that the sufficiency or adequacy of evidence to support a finding of fact is a matter for decision of the court of facts and cannot be agitated in a second appeal. Sometimes, this position is expressed by saying that like all questions of fact, sufficiency or adequacy of evidence in support of a case is also left to the jury for its verdict. This position has always been accepted without dissent and it can be stated without any doubt that it enunciates what can be properly characterised as an elementary proposition. Therefore, whenever this Court is satisfied that in dealing with a second appeal, the High Court has, either unwittingly and in a casual manner, or deliberately as in this case, contravened the limits prescribed by s. 100, it becomes the duty of this Court to intervene and give effect to the said provisions. It may be that*

in some cases, the High Court dealing with the second appeal is inclined to take the view that what it regards to be justice or equity of the case has not been served by the findings of fact recorded by courts of fact; but on such occasions it is necessary to remember that what is administered in courts is justice according to law and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law. If in reaching its decisions in second appeals, the High Court contravenes the express provisions of section 100, it would inevitably introduce in such decisions an element of disconcerting unpredictability which is usually associated with gambling; and that is a reproach which judicial process must constantly and scrupulously endeavour to avoid."

*13***.** *Though precedents abound on this settled principle of law, we do not consider it necessary to burden our discussion unnecessarily except to rely further on Gurdev Kaur v. Kaki, (2007) 1 SCC 546, holding as follows:*

"71. The fact that, in a series of cases, this Court was compelled to interfere was because the true legislative intendment and scope of Section 100 CPC have neither been appreciated nor applied. A class of judges while administering law honestly believe that, if they are satisfied that, in any second appeal brought before them evidence has been grossly

misappreciated either by the lower appellate court or by both the courts below, it is their duty to interfere, because they seem to feel that a decree following upon a gross misappreciation of evidence involves injustice and it is the duty of the High Court to redress such injustice. We would like to reiterate that the justice has to be administered in accordance with law.

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73. The Judicial Committee of the Privy Council as early as in 1890 stated that there is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however gross or inexcusable the error may seem to be, and they added a note of warning that no court in India has power to add to, or enlarge, the grounds specified in Section 100.

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81. Despite repeated declarations of law by the judgments of this Court and the Privy Council for over a century, still the scope of Section 100 has not been correctly appreciated and applied by the High Courts in a large number of cases. In the facts and circumstances of this case the High Court interfered with the pure findings of fact even after the amendment of Section 100 CPC in 1976. The High Court would not have been justified in interfering with the concurrent findings of fact in this case even prior to the amendment of Section 100 CPC. The judgment of the High Court is clearly against the

provisions of Section 100 and in no uncertain terms clearly violates the legislative intention.

82. In view of the clear legislative mandate crystallised by a series of judgments of the Privy Council and this Court ranging from 1890 to 2006, the High Court in law could not have interfered with pure findings of facts arrived at by the courts below. Consequently, the impugned judgment is set aside and this appeal is allowed with costs.”

14. The order of the High Court interfering with concurrent findings of facts by two courts is, therefore, held to be unsustainable in exercise of the powers under Section 100 of the Civil Procedure Code. The order of the High Court is consequently set aside. The orders dated 06.03.1998 and 13.06.2002 of the Trial Court and the First Appellate Court are restored. The suit of the plaintiffs is dismissed. The present appeal is allowed.”

30. In ***Brij Narayan Shukla (dead)through legal representatives vs. Sudesh Kumar Alias Suresh Kumar (dead) through Legal Representatives and others, (2024) 2 SCC 590***, the Hon’ble Supeme Court held as under:

“10.2 The High Court was hearing the Second Appeal under section 100 of Code of Civil Procedure, 1908 and it having reappreciated the findings to disturb findings of fact, committed an error.”

31. In ***Civil Apepal 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.*
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> *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.*
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> *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."*

32. In the present case, the findings as rendered by the Courts below are findings of fact which do not call for any interference. The Courts below has rightly adjudicated the matter as per legal principles of law.

33. 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

March 02, 2026
(vt)