

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 370 of 2007

Reserved on: 27.07.2026

Date of Decision: 06.08.2026

Soma Devi (deceased) through LRs

...Appellant

Versus

Sudershan Singh & Ors.

...Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ Yes.

For the Appellants : Mr Bhupender Gupta, Senior Advocate with Mr Janesh Gupta, Advocate.

For the respondents : Mr Ajay Sharma, Senior Advocate with Mr Atharv Sharma, Advocate.

Rakesh Kainthla, Judge

The present appeal is directed against the judgment and decree dated 22.05.2007 passed by the learned Additional District Judge, Fast Track Court, Kangra, at Dharamshala (learned Appellate Court), vide which the judgment and decree

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

dated 28.11.2001 passed by the learned Sub Judge-II, Nurpur, District Kangra (learned Trial Court), were upheld. (*The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience*).

2. Briefly stated, the facts giving rise to the present appeal are that the plaintiffs filed a civil suit before the learned Trial Court for seeking a declaration that they are the tenants of the suit land as mentioned in the head note and para 1 of the plaint, they have become the owners after the commencement of the HP Tenancy and Land Reforms Act, the entries showing the defendant to be the owner in possession of the suit land are bad, and the order dated 07.04.1982 passed by the learned Assistant Collector 2nd Grade, Indora, was null and void and not binding upon the plaintiffs' rights. A consequential relief of permanent prohibitory injunction for restraining the defendant from interfering with the plaintiffs' possession was also sought. It was asserted that Chhaju Ram was the owner in possession of the suit land. He was the real cousin of the plaintiffs' father. He was unmarried and died without any wife or children. His estate was mutated in the name of the plaintiffs' father. The plaintiffs' father died on 10.02.1987, and the plaintiffs inherited the suit

land. Chhaju Ram was cultivating the suit land much before 1960, and he became the owner after the commencement of the HP Tenancy and Land Reforms Act. The defendant and her husband, in connivance with the revenue official, secured an order dated 07.04.1982 for the correction of Khasra Girdawari without issuing a notice to Chhaju Ram or his family members. The revenue entries were attested in the defendant's favour. The defendant started interfering with the plaintiffs' possession based on the revenue entries. Therefore, the suit was filed for seeking the relief mentioned above.

3. The suit was opposed by filing a written statement taking preliminary objections regarding lack of maintainability, jurisdiction and *locus standi*. The contents of the plaint were denied on the merits. It was specifically denied that Chhaju Ram was inducted as a tenant of the suit land. It was asserted that the order was passed in the presence of Chhaju Ram. The defendant is in possession of the suit land exclusively as the owner. The suit has been filed without any basis. Hence, it was prayed that the suit be dismissed.

4. A replication denying the contents of the written statement and affirming those of the plaint was filed.

5. The learned Trial Court framed issues on 11.06.1999. The learned Appellate Court deleted issue No. 1 framed by the learned Trial Court, and framed two issues. The following issues were finally settled between the parties:

- 1(a) Whether Chhaju Ram was a tenant of the land in dispute and after enforcement of the H.P. Tenancy and Land Reforms Act, Chhaju Ram became full owner in possession of the land in dispute? OPP
- 1(b) Whether father of the plaintiffs, namely Sant Ram, succeeded Chhaju Ram on his death and became owner of the land in dispute on the death of Chhaju Ram? OPP
2. Whether the suit is not maintainable? OPD
3. Whether this Court has got no jurisdiction to try the present suit? OPD.
4. Whether the plaintiff has got no locus standi to file the present suit? OPD
5. Relief.

6. The parties were called upon to produce the evidence and the plaintiffs examined H.S. Katoch (PW1) and Baldev Singh (PW2). The defendant examined Thuru Ram (DW1).

7. The learned Trial Court decreed the suit on 01.06.1999. The defendant filed an appeal which was dismissed by the learned District Judge, Kangra at Dharamshala on

08.09.2000. A regular second appeal No. 603 of 2000 was filed before this Court, and this Court set aside the judgment and decree passed by the learned District Judge on 23.03.2001 and remitted the matter to the learned District Judge. The learned District Judge deleted Issue No. 1 and framed Issues No. 1(a) and 1(b) and remitted the matter to the learned Trial Court for a fresh decision.

8. Learned Trial Court held that the dispute between the landlord and tenant could have been resolved by the Assistant Collector 1st Grade as per Rule 29 of the HP Tenancy and Land Reforms Rules. The order passed by the learned Assistant Collector 2nd Grade was without jurisdiction. The tenancy could have been surrendered in favour of the State Government and not in favour of the landlord. Chhaju Ram was a tenant in possession of the suit land, who became the owner after the commencement of the H.P Tenancy and Land Reforms Act. The order was passed without jurisdiction, and the jurisdiction of the Civil Court to hear and entertain the suit was not barred. Hence, the learned Trial Court answered issues No. 1(a) and 1(b) in the affirmative, the rest of the issues in negative and decreed the suit.

9. Being aggrieved by the judgment and decree passed by the learned Trial Court, the plaintiff filed an appeal. An application for additional evidence was filed before the learned Appellate Court, which was dismissed by the learned Appellate Court. However, the dismissal order was set aside by this Court in CMPMO No. 449 of 2004 subject to the payment of costs of ₹1,000/-.

10. Statements of Smt. Darshana Devi (DW2), Harnam Singh (DW2) and HS Katoch (PW3) were recorded, and some documents were also tendered in evidence before the learned Appellate Court.

11. Learned Appellate Court held that the Assistant Collector, 2nd Grade, was not competent to pass the order. No relinquishment of tenancy could have been made in favour of the landlord, and the relinquishment could have only been made in favour of the State as per the provisions of the HP Tenancy and Land Reforms Act. There was no infirmity in the judgment and decree passed by the learned Trial Court. Hence, the appeal was dismissed.

12. Being aggrieved by the judgment and decree passed by the learned Appellate Court, the plaintiff has filed the present appeal, which was admitted on the following substantial questions of law on 28.08.2008:

1. Whether the two Courts below were justified in raising a presumption against the defendant on the ground that she has not herself entered into the witness box?
2. Whether the two Courts below were justified in not relying upon the statement made by the predecessor in interest of the plaintiffs given before the Tehsildar, while returning the findings in favour of the plaintiffs?
3. Whether the suit of the plaintiff/respondent was barred by limitation?
4. Whether the learned First Appellate Court has erred in omitting to consider and discuss the documents Dx, Dy and Dz, freshly tendered in evidence by way of additional evidence under Order 41, r.27 CPC, thereby vitiating the impugned judgment and decree?

13. I have heard Mr Bhupender Gupta, learned Advocate Counsel assisted by Mr Janesh Gupta, learned counsel for the appellants and Mr Ajay Sharma, learned Senior Advocate assisted by Mr Atharv Sharma, learned counsel for the respondents.

14. Mr Bhupender Gupta, learned Senior Advocate for the appellants submitted that the learned Appellate Court failed to consider the evidence produced before it and the judgment

and decree passed by the learned Appellate Court is vitiated because of this omission. The defendant examined her power of attorney, who had appeared before the revenue authorities and was managing the affairs of the defendant. He was conversant with the facts of the case, and no adverse inference could have been drawn against the defendant for not appearing in the Court. Chhaju Ram had appeared before the Revenue Official and made a statement that he was not in possession of the suit land for many years. The provisions of the Punjab Tenancy Act applied to the present case at that time, and the tenant could have surrendered the tenancy in favour of the landlord. Learned Courts below erred in holding that the name of the defendant was wrongly recorded. It was based upon the admission made by Chhaju Ram. Subsequently, H.S. Katoch had also appeared before the revenue official and admitted the defendant's claim that Chhaju Ram was not the tenant of the suit land. Learned Courts below ignored all these circumstances and dismissed the suit. Hence, he prayed that the present appeal be allowed and the judgments and decrees passed by learned Courts below be set aside.

15. Mr Ajay Sharma, learned Senior Advocate for the respondent submitted that the jurisdiction to decide the dispute between the landlord and the tenant has been conferred upon the Assistant Collector 1st Grade and the Assistant Collector 2nd Grade had no jurisdiction to pass the order. No notice was served upon Chhaju Ram, and the order was passed in his absence. No power of attorney was brought on record to prove that H.S. Katoch had any authority to make a statement on behalf of Sant Ram. Therefore, the statement relied before the learned Appellate Court could not have bound Sant Ram. There is no infirmity in the judgment and decree passed by the learned Courts below. Hence, he prayed that the present appeal be dismissed.

16. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

Substantial Question of Law No.1:

17. Learned Courts below held that an adverse inference has to be drawn for the non-examination of the defendant, Soma Devi. This finding cannot be sustained. It was laid down by the Hon'ble Supreme Court in *Rattan Dev v. Pasam Devi*,

(2002) 7 SCC 441: 2002 SCC OnLine SC 86, that the non-appearance of the party will become insignificant when there is other evidence on record. It was observed at page 443: -

"5. Learned counsel for the respondent has placed reliance on *Iswar Bhai C. Patel v. Harihar Behera* [(1999) 3 SCC 457] wherein this Court has emphasised that withholding of the plaintiff himself from the witness box and thereby denying the defendant an opportunity for cross-examination of himself results in an adverse inference being drawn against the plaintiff. That proposition of law is undoubted. However, as we have already said, that is a fact to be kept in view and taken into consideration by the appellate court while appreciating other oral and documentary evidence available on record. Maybe, that from other evidence — oral and documentary — produced by the plaintiff, or otherwise brought on record, the plaintiff has been able to discharge the onus which lay on him, and, subject to the court forming that opinion, a mere abstention of the plaintiff himself from the witness box may pale into insignificance."

18. It was laid down by the Hon'ble Karnataka High Court in *Smt. Gangavva vs. Arjuna* AIR 2001 Karnataka 231 that it is not necessary that a party should examine himself in all the cases. If some facts are in exclusive knowledge of the party, it has to appear before the court; otherwise, it can rely upon the other evidence. It was observed:

"It is also not necessary in law that always the party to the proceedings should examine himself. The requirement of law insists only that the party who puts

forth his case should prove the material facts set up. A party without examining himself can as well establish his case, if possible, by examining the witnesses who are competent to testify. However, in cases where there is an onus placed on the party to discharge and if the facts required to be deposed are necessarily to be testified by the party in person, in such a situation, such a party runs the risk of facing adverse inference for non-examination. Otherwise, it is also open for the party to give evidence through the power of attorney, and such evidence would be valid substituted evidence of the plaintiff. Ultimately, appreciation of the probative value of the evidence and competence of the person testifying is a matter that is to be tested in the course of the cross-examination.”

19. This position was reiterated in *Janki Vashdeo Bhojwani v. IndusInd Bank Ltd.*, (2005) 2 SCC 217: 2004 SCC OnLine SC 1538, and it was held that the power of attorney can depose for the principal for the acts done by him as a power of attorney. It was observed at page 222:

“13. Order III, Rules 1 and 2 CPC, empowers the holder of power of attorney to "act" on behalf of the principal. In our view, the word "acts" employed in Order III, Rules 1 and 2 CPC, confines only in respect of "acts" done by the power of attorney holder in the exercise of the power granted by the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some "acts" in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have personal knowledge and in respect of which the principal is entitled to be cross-examined.”

20. It was held in *Man Kaur v. Hartar Singh Sangha*, (2010) 10 SCC 512: 2010 SCC OnLine SC 1125 that a power of attorney can appear as a witness to prove the transactions carried out by him as an attorney. It was observed at page 523:

18. We may now summarise for convenience, the position as to who should give evidence in regard to matters involving personal knowledge:

(a) An attorney-holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction, can only give formal evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney-holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney-holder alone has personal knowledge of such acts and transactions and not the principal, the attorney-holder *shall* be examined, if those acts and transactions have to be proved.

(c) The attorney-holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which the principal alone has personal knowledge.

(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney-holder, necessarily the attorney-holder alone can give evidence in regard to the transaction. This frequently happens in the case of principals carrying on business through authorised

managers/attorney-holders or persons residing abroad managing their affairs through their attorney-holders.

(e) Where the entire transaction has been conducted through a particular attorney-holder, the principal has to examine that attorney-holder to prove the transaction, and not a different or subsequent attorney-holder.

(f) Where different attorney-holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney-holders will have to be examined.

(g) Where the law requires or contemplates the plaintiff or other party to a proceeding to establish or prove something with reference to his “state of mind” or “conduct”, normally the person concerned alone has to give evidence and not an attorney-holder. A landlord who seeks eviction of his tenant, on the ground of his “bona fide” need and a purchaser seeking specific performance who has to show his “readiness and willingness” fall under this category. There is, however, a recognised exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or “readiness and willingness”. Examples of such attorney-holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad.

21. Therefore, an adverse inference can only be drawn against a party if it has some knowledge and it fails to appear

before the Court; otherwise, if the General Power of Attorney has the knowledge, he can always appear on behalf of the party, and no adverse inference can be drawn against a party for failure to appear before the Court.

22. In the present case, the application (Ext.P3) was filed by the husband of Soma Devi in his capacity as a General Power of Attorney. He had appeared before the revenue authority as a defendant's General Power of Attorney. He had also appeared before the Tehsildar (Settlement) and made a statement (Ext.DW2/D) in his capacity as a General Power of Attorney of Soma Devi. Thus, he was representing the defendant before the revenue authorities. The plaintiff is aggrieved by the proceedings initiated by the defendant before the revenue officer, and only the power of attorney could have deposed about the proceedings. The defendant had never appeared before the revenue authorities, and she did not have any knowledge regarding the proceedings conducted by the revenue authorities. Therefore, the defendant was not a better witness than her General Power of Attorney, and no adverse inference could have been drawn against the defendant for not appearing

before the Court. Hence, this substantial question of law is answered accordingly.

Substantial Question of Law No.2:

23. The plaintiff filed a civil suit before the Court, challenging the order dated 07.04.1982. The defendant filed a written statement and claimed that the order passed by the Assistant Collector 2nd Grade bearing No. 60/82 was correct, valid and binding. No plea was taken by the defendant in the written statement that any proceedings were conducted before Tehsildar (Settlement) in which H.S. Katoch had appeared and made a statement. Thuru Ram (DW1) stated that Chhaju Ram made a statement that he was not cultivating the land and an order was passed in favour of the defendant in the year 1982 and an appeal was filed, which was dismissed. Thus, he never claimed that any proceedings were conducted before Tehsildar (Settlement), and the learned Trial Court could not have noticed the statement made by H.S. Katoch before Tehsildar (Settlement).

24. The defendant filed an application under Order 41 Rule 27 of CPC for producing the copy of order dated 30.07.1986

passed by Naib Tehsildar (Settlement) Raja Ka Talab alongwith the statement of H.S. Katoch, which application was initially rejected by learned Appellate Court, but was allowed by this Court subject to the payment of cost of ₹1,000/- and the statement of H.S. Katoch was proved before the learned Appellate Court.

25. Mr Ajay Sharma, learned Senior Advocate submitted that there is no evidence that the cost ordered to be paid by this Court was ever paid and the evidence recorded by the learned Appellate Court is to be excluded from consideration. This submission cannot be accepted. It was laid down by a full bench of the Punjab and Haryana High Court in *Prem Sagar v. Phul Chand*, 1983 SCC OnLine P&H 398: ILR (1984) 1 P&H 54, that where a party failed to demand the cost on the adjourned date of hearing, the party liable to pay the cost is not debarred from prosecuting the suit or defending it. It was observed at page 63:

16. To conclude, both on principle and precedent, as also on the language of Section 35-B, the answer to the question posed at the very outset is rendered in the negative. It is held that the party defaulting in the payment of costs on the date fixed for the payment thereof (on which date this issue is not at all raised) cannot on subsequent date or dates be barred afresh from

further prosecuting the suit or the defence, as the case may be.

26. This judgment was followed in *Roor Singh v. Raghbir Singh*, 2002 SCC OnLine P&H 805: (2003) 1 RCR (Civil) 159 (2) and it was observed at page 160:

"6. Having heard the learned counsel for the parties, I am of the considered opinion that the view taken by the Civil Judge does not suffer from any illegality warranting interference of this Court under Section 115 of the Code. The judgment in the case of *Prem Sagar* (supra) is absolutely clear in as much as it is observed that if the issue of non-payment of costs is not raised, the same cannot be resuscitated. Moreover, the subsequent view taken by this Court in *Slier Singh v. Mehma*, 1993 (2) RCR (Civil) 558 (P&H): 1993 (1) PLR 751 is that the objection of Section 35-B of the Code is to secure efficacious prosecution of the suit and not to penalise the party against whom the costs have been awarded. Therefore, the principle of waiver would apply to this case. A similar view has been taken by this Court in the case of *Pushpa v. Kundan Lal*, 1994 (2) RCR (Civil) 134 (P&H): 1994 (1) PLR 717."

27. This Court also held in *Piaro Devi v. Anant Ram*, 2008 SCC OnLine HP 8: AIR 2008 HP 107 that the provision of Section 35B of the CPC is not mandatory and the Court is not bound to stop the prosecution of the suit or defence as the case may be. It was observed at page 110:

"13. After considering all the aforesaid Authorities, with due respect to the Punjab and Haryana High Court, I am not inclined to accept the view taken by that Court. The

Rules of Procedure are meant to be the handmaiden of justice to further the cause of justice. The party in a given case may have a very valid ground to explain why it could not pay the costs on the next date. The Court must always have a discretion to examine whether the reasons put forth by the party are valid or not. Section 148 CPC empowers a Court to extend time in any matter. This power would be set at naught if it is held that the provisions of Section 35-B CPC are mandatory and that the Court would have no option but to stop the further prosecution of the suit by the plaintiff or strike off the defence of the defendants in case of non-payment of costs. I am in agreement with the reasoning given by the Orissa, Patna, Gauhati and Rajasthan High Courts and consequently I hold that the provisions of Section 35-B CPC are not mandatory but are only directory. The Court may, in the absence of the concerned party, or in the absence of any plausible explanation for non-payment of costs, pass an order stopping the further prosecution of the case by the defaulting party. However, the Court, in some circumstances, may not pass such an order.

28. In the present case, the record does not show that the plaintiffs had demanded the costs on 07.07.2005, when the matter was taken up or on 01.08.2005, when the evidence was ordered to be summoned. Therefore, it is not permissible for the plaintiffs to submit before this Court that the evidence could not have been led without the payment of the cost.

29. The defendant had not claimed before the learned Trial Court or in the written statement that any proceedings had taken place before Tehsildar (Settlement). Therefore, the

evidence led before the learned Appellate Court regarding the proceedings conducted before Tehsildar (Settlement) is beyond pleadings. It was laid down by the Judicial Committee of the Privy Council about 100 years ago in *Siddik Mahomed Shah v. Saran*, 1929 SCC OnLine PC 79: AIR 1930 PC 57 (1): (1930) 58 Mad LJ 7: PLR (1930) 31 PC 150 (1) that no amount of evidence can be looked into on a plea never put forward by the party. It was observed:

“This is a hopeless appeal. A certain Hote Khan is alleged by the appellant, who is in possession of certain lands which belonged to Hote Khan, to have given these lands to him. That story is not accepted, and there are concurrent findings as to the fact by both Courts. After Hote Khan's death, there was a transference of the lands in question by mutation of names effected upon the application of Hote Khan's widow. The Judicial Commissioners think it very probable that Hote Khan's widow, being an ignorant person and with no one to help her, transferred the lands in that way in order that her spiritual adviser might hold them as trustees. The spiritual adviser, who is the appellant wishes to keep them first upon the ground already specified which their Lordships have already disposed of and, secondly upon the ground that it was a gift made by the widow herself *but that claim was never made in the defence presented and the learned Judicial Commissioners therefore, very truly find that no amount of evidence can be looked into upon a plea which was never put forward.* The result is that their Lordships will humbly advise His Majesty that the appeal should be dismissed. As the respondents have not

appeared, there will be no order as to costs.” (Emphasis supplied)

30. This judgment has been consistently followed by the various Courts. It was held by the Hon’ble Supreme Court in *Duggi Veera Venkata Gopala Satyanarayana v. Sakala Veera Raghavaiah*, (1987) 1 SCC 254 that any amount of proof offered without appropriate pleadings is generally of no relevance. It was observed: –

6. There can be no doubt that under the law of pleadings facts mentioned in sub-clause (iii) are to be pleaded in the petition and thereafter proved at the trial for the purpose of an order of eviction against the tenant. In a decision of this Court in *Hasmat Rai v. Raghunath Prasad* [(1981) 3 SCC 103, 109; AIR 1981 SC 1711 : (1981) 3 SCR 605] it has been observed by Desai, J. that in order to obtain an order of eviction of a tenant under Section 12(1)(f) of Madhya Pradesh Accommodation Control Act, 1961, the landlord has to plead and establish (i) that he bona fide requires the accommodation let to the tenant for non-residential purposes for the purpose of continuing or starting his business; and (ii) that he has no other reasonably suitable non-residential accommodation of his own in his occupation in the city or the town concerned. *Further, it has been observed that any amount of proof offered without appropriate pleading is generally of no relevance. We respectfully agree with the above statement of law and reiterate the same.* We are, however, not inclined to interfere with the impugned order of eviction in the instant case for the reasons stated hereinafter.” (Emphasis supplied)

31. Similarly, it was held in *Kishor Kirtilal Mehta v. Lilavati Kirtilal Mehta Medical Trust*, (2007) 10 SCC 21 that evidence led beyond the pleading has to be discarded and no amount of the evidence led regarding the fact which was never pleaded can be looked into by the Court. It was observed: -

13. By and large, which part of the evidence is to be discarded as being outside the pleadings is something that the court considers when it discusses the evidence. There cannot also be any doubt that no amount of evidence can be looked into on a plea never put forward. (See *Siddik Mohd. Shah v. Saran* [AIR 1930 PC 57 (1)].) Therefore, at this stage, if the operation of those two orders is not stayed, it would mean that the examination of the witnesses will cover only that portion of the plea admitted to be put forward by Defendants 11 to 13 or in the plaint, and that would cause inconvenience to the trial which has been directed to be expedited by this Court. Merely because some more or not strictly necessary questions are also asked either in cross-examination or in chief examination, that cannot also prejudice the contesting defendants since they can always plead either that a part of the evidence has to be discarded as not being covered by the pleadings in the case, or that it is irrelevant.”

32. It was laid down by this Court in *Deepak Parkash v. Sunil Kumar*, 2014 (1) Him. L.R. 654 that no amount of evidence beyond pleadings can be looked into. It was observed:

17. It is a settled law that no amount of evidence beyond pleadings can be looked into. It is further the well-settled principle of law that the evidence adduced beyond the

pleading would not be admissible nor can any evidence be permitted to be adduced which is at variance with the pleadings. The Court at the later stage of the trial, as also the Appellate Court, having regard to the rule of pleading would be entitled to reject the evidence wherefore there does not exist any pleading."

33. This position was reiterated in *Sonam Chomdan v.*

Ranjit Singh, 2017 SCC OnLine HP 2617, wherein it was held: -

31. Mr Verma, while placing reliance upon *Deepak Prakash v. Sunil Kumar*, (2014) 2 Shim LC 822 and *C. Mackertich v. Stuart & Co. Ltd.*, (1971) 3 SCC 39: AIR 1970 SC 839, contended that no amount of evidence beyond Pleading can be looked into. There cannot be any quarrel with regard to the aforesaid proposition of law as laid down in the case referred to above. *It is well settled that evidence adduced beyond the Pleadings would not be admissible, nor can any evidence be permitted to be adduced which is at variance with the Pleadings.* However, the contention having been made by Mr Verma cannot be accepted since no Plea with regard to nonregistration of agreement, on the basis of which Plaintiff came into possession over the land, was raised in written statement having been filed by appellant-defendant, they cannot be allowed to raise this Plea in the instant appeal because of the fact that submission with regard to non-registration of agreement relied upon by the Plaintiff to claim ownership and possession of the suit land is purely legal submission and can be raised/made at any stage of the case." (Emphasis supplied)

34. It was laid down by the Hon'ble Supreme Court in

Iqbal Ahmed v. Abdul Shukoor, 2025 SCC OnLine SC 1787, that the

additional evidence can only be led if the foundation for the

evidence is laid in the pleadings. It was observed:

“8. In our opinion, before undertaking the exercise of considering whether a party is entitled to lead additional evidence under Order XLI Rule 27(1) of the Code, it would be first necessary to examine the pleadings of such party to gather if the case sought to be set up is pleaded so as to support the additional evidence that is proposed to be brought on record. In the absence of necessary pleadings in that regard, permitting a party to lead additional evidence would result in an unnecessary exercise and such evidence, if led, would be of no consequence, as it may not be permissible to take such evidence into consideration. Useful reference in this regard can be made to the decisions in *Bachhaj Nahar v. Nilima Mandal*, (2008) 17 SCC 491: AIR 2009 SC 1103 and *Union of India v. Ibrahim Uddin*, (2012) 8 SCC 148. Thus, besides the requirements prescribed by Order XLI Rule 27(1) of the Code being fulfilled, it would also be necessary for the Appellate Court to consider the pleadings of the party seeking to lead such additional evidence. It is only thereafter, on being satisfied that a case as contemplated by the provisions of Order XLI Rule 27(1) of the Code has been made out, that such permission can be granted. In the absence of such exercise being undertaken by the High Court in the present case, we are of the view that it committed an error in allowing the application moved by the defendant for leading additional evidence.”

35. In the present case, no foundation for producing additional evidence was laid in the pleadings, and the evidence is inadmissible.

36. It was submitted that this Court had granted permission to produce the additional evidence and its admissibility is not open to challenge. This submission is not acceptable. This Court had clarified while passing an order on

10.05.2005 that the evidence led by the petitioner would be subject to the principle of relevance based on the law of evidence. Therefore, the defendant was to satisfy the Court regarding the relevance of the evidence. Since only a fact in issue and the relevant facts are admissible, and a fact which has not been pleaded cannot be proved. Therefore, this evidence could not have been produced by the defendant, and the learned Appellate Court cannot be faulted for discarding the evidence.

37. Moreover, H.S. Katoch (PW3) specifically stated that he never remained the General Power of Attorney or Special Power of Attorney of his father. His father had never appointed any person as General Power of Attorney or Special Power of Attorney. Harnam Singh (DW2) proved the record. He stated in his cross-examination that there was no Power of Attorney of any person in the record. His testimony corroborates the statement of H.S. Katoch that he was not a power of attorney and no reliance could have been placed on his testimony.

38. Thus, the learned Appellate Court cannot be faulted for not relying upon the statement made by H.S. Katoch before

Tehsildar, and this substantial question of law is answered accordingly.

Substantial Question of Law No.3:

39. It was submitted that the order was passed on 07.04.1982 and the suit was filed on 30.09.1992. Therefore, the suit was barred by limitation. This submission cannot be accepted. Learned Courts below had rightly held that the order was passed by the learned Assistant Collector 2nd Grade and not by the Land Reforms Officer/Assistant Collector 1st Grade. Therefore, the order was without jurisdiction. It was laid down by this Court in *Krishan Chand Vs. Jeet Ram, Latest HLJ (2009) 2978*, that only the Assistant Collector of the First Grade is competent to hold an enquiry into the relationship of the landlord and tenant as per Rule 29 of HP Tenancy Rules. It was observed: -

7. In *Besru vs. Shibu, 1999(1) Shim.L.C. 343*, this Court has held: -

"10. Admittedly, in the present case, no attempt was made by the Assistant Collector 2nd Grade to serve the plaintiff in accordance with the law. As such, the mutation is void ab initio, being violative of the principles of natural justice. It can be held, so far, as another reason why it was not passed by the competent authority. From Rule 29 of the Rules, it

is clear that only an Assistant Collector of the Ist Grade was the competent Land Reforms Officer to hold an inquiry under Section 104 of the Act. It is further fortified by the Notifications dated 27th/29th September, 1995, whereby all the Tehsildars in Himachal Pradesh were conferred with powers of Assistant Collector of Ist Grade for purposes of Chapter X of the Act under which Section 104, pertaining to acquisition of proprietary rights by the tenants, fails. By another Notification of the same date, Tehsildars conferred with the powers of Assistant Collector, Ist Grade, were appointed Land Reforms Officers for carrying out the purposes of Chapter X of the Act within their respective jurisdiction with immediate effect. So far as the present case is concerned, from the perusal of the mutation, it is clear that it was attested by the Assistant Collector 2nd Grade, who had no jurisdiction to do so. Had the plaintiff been served in accordance with law and the competent authority held proper inquiry, the mutation conferring proprietary rights on the defendants would not have been passed in view of the Bar under sub-section (8)(a) of Section 104 of the Act."

8. By Notification No.1-8/68-Rev.1 issued by the competent Authority under Section 86 of the Act, it is only the Assistant Collector, Ist Grade, who is empowered to take up proceedings of conferment of proprietary rights. Notification reads: -

"No.1-8/68-Rev.1- In exercise of the powers vested in him under sub-section (1) of section 86 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 (Act No.8 of 1974) and all other powers enabling him in this behalf, the Governor, Himachal Pradesh, is pleased to confer on all the Tehsildars in Himachal Pradesh, all the powers exercisable by an Assistant Collector of First Grade, for the purposes of Chapter IX of the aforesaid Act,

within their respective jurisdiction, with immediate effect."

It is undisputed that the provision of conferment of proprietary rights by tenants is contained in Chapter IX of the Act as aforesaid.

These proceedings are, therefore, void ab initio, having been conducted by an officer who is not empowered to exercise the power to grant proprietary rights or to perform any other ancillary act. The very basis set up by the defendants for claiming ownership is, therefore, without any basis. This question would have concluded the entire controversy; however, since the appeal has been admitted on other questions, I am taking them up for consideration.

40. This position was reiterated in *Khushi Ram versus Rajni Devi 2010 (2) Shim. LC 421* and it was observed: -

"8. Now, when the plaintiff-respondent was in possession of the suit land and there were entries in revenue papers, continuing since 1967-68, Ex.P-3, showing the plaintiff in possession of the suit land, on payment of rent in kind, Assistant Collector 2nd Grade ought not to have entertained the application for correction of entries, in view of the provisions of Section 104 of the H.P. Tenancy and Land Reforms Act, 1972, which provides that on and with effect from the appointed day, i.e. 3.10.1975, a person recorded as non-occupancy tenant, would become owner, unless land owner exercises right to resume the tenanted land, and sub section (4) of Section 104 of the aforesaid Act says that if any dispute arises as to whether a person is a tenant under a land owner or not, the onus of proof shall be on the land owner to prove that the person recorded as tenant, is not a tenant. Assistant Collector 2nd Grade ought not to have passed the impugned order, as he had no jurisdiction in the matter. Jurisdiction of even Civil Courts is barred to entertain or determine this kind of

dispute, by virtue of Section 112 of the H.P. Tenancy and Land Reforms Act, 1972. Such a question, as per rule 29 of the H.P. Tenancy and Land Reforms Rules, 1975, is required to be determined only by the Land Reforms Officer, exercising powers of Assistant Collector 1st Grade.”

41. It was laid down by this court in *Krishan Singh v. Dayal Singh*, 2016 SCC OnLine HP 1128 that the Assistant Collector Second Grade has no jurisdiction to deal with the tenancy disputes. It was observed:

20. In the case of *Besru v. Shibu*, reported in 1999 (1) Shim. L.C. 343, this Court has held that it was evident from Rule 29 of the H.P. Tenancy and Land Reforms Rules, 1975 that only the Assistant Collector (1st Grade) was a competent Land Reforms Officer to hold an enquiry under Section 104 of the Act. It has been held as follows:

“9. Rule 28 of the Rules provides that mutation is to be attested in the presence of the parties and Rule 29 provides that a dispute under subsection (4) of Section 104 of the Act shall be decided by the Land Reforms Officer in his capacity as an Assistant Collector 1st Grade in accordance with the relevant provisions of the Punjab Land Revenue Act or the H.P. Land Revenue Act, as the case may be, though the inquiry held by him would be summary inquiry. In the H.P. Land Revenue Act, which applies to the present case. Sections 20 to 23 provide for summoning persons for the purpose of any business before a Revenue Officer and the mode of service of summons. Under Section 21 thereof, it is stated that summons issued by a Revenue Officer shall, if practicable, be served personally upon the person to whom it is addressed or, failing him, his recognised agent, or in case it is refused by

affixation on the last known address or by sending the same by registered post of proclamation, etc.

10. Admittedly, in the present case no attempt was made by the Assistant Collector 2nd Grade to serve the plaintiff in accordance with the law. As such, the mutation is void *ab initio* being violative of the principles of natural justice. It can be held so for another reason that it was not passed by the competent authority. From Rule 29 of the Rules, it is clear that only the Assistant Collector of the 1st Grade was the competent Land Reforms Officer to hold an inquiry under Section 104 of the Act. It is further fortified by the Notifications dated 27th/29th September 1995 whereby all the Tehsildars in Himachal Pradesh were conferred with powers of Assistant Collector of 1st Grade for purposes of Chapter X of the Act under which Section 104, pertaining to the acquisition of proprietary rights by the tenants, fails. By another Notification of the same date, Tehsildars conferred with the powers of Assistant Collector 1st Grade were appointed Land Reforms Officers for carrying out the purposes of Chapter X of the Act within their respective jurisdiction with immediate effect. So far as the present case is concerned, from the perusal of the mutation, it is clear that it was attested by the Assistant Collector 2nd Grade who had no jurisdiction to do so. Had the plaintiff been served in accordance with law and the competent authority held a proper inquiry, the mutation conferring proprietary rights on the defendants would not have been passed in view of the Bar under sub-section (8)(a) of Section 104 of the Act.”

21. In the case of *Krishan Chand v. Jeet Ram*, reported in *Latest HLJ 2009 (HP) 978*, this Court has held that the proceedings for conferment of proprietary rights conducted by A.C. 2nd Grade would be void *ab initio*. This Court has further held that since the very purpose of the tenancy had been challenged, the Civil Court had the jurisdiction to decide the matter. It has been held as follows:

6. Learned counsel has urged that proprietary rights were conferred on the appellants herein in accordance with law and has emphasised that Ex.DX-1 to DX-3, which are the basis and foundation for claiming ownership under Section 104 of the H.P. Tenancy and Land Reforms Act, 1972 (hereinafter referred to as the 'Act').

8. By Notification No. 1-8/68-Rev.1 issued by the competent Authority under Section 86 of the Act, it is only the Assistant Collector Ist Grade, who is empowered to take up proceedings of conferment of proprietary rights. The notification reads: -

“No. 1-8/68-Rev.1- In exercise of the powers vested in him under sub-section (1) of section 86 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 (Act No. 8 of 1974) and all other powers enabling him in this behalf, the Governor, Himachal Pradesh, is pleased to confer on all the Tehsildars in Himachal Pradesh, all the powers exercisable by an Assistant Collector of First Grade, for the purposes of Chapter IX of the aforesaid Act, within their respective jurisdiction, with immediate effect.”

It is undisputed that the provision of conferment of proprietary rights by tenants is contained in Chapter IX of the Act as aforesaid.

These proceedings are, therefore, void ab initio, having been conducted by an officer who is not empowered to exercise the power to grant proprietary rights or to perform any other ancillary act. The very basis set up by the defendants for claiming ownership is, therefore, without any basis.

42. It was laid down by this Court in *Shiam Singh v.*

Chaman Lal, 2010 SCC OnLine HP 689 that a person can institute

a suit for declaration of his right under Section 46 of the HP Land Revenue Act as and when he feels aggrieved by it. It was observed:

13. Coming to substantial question of law No. 4, a reading of Section 46 of the H.P. Land Revenue Act shows that if any person considers himself aggrieved as to any right of which he is in possession by an entry in a record-of-rights or in a periodical record, he may institute a suit for declaration of his right under Chapter VI of the Specific Relief Act, 1963.

14. It is well settled that for a suit for declaration, referred to in Section 46, limitation begins to run not from the date of the entry affecting the right of the person concerned, but from the date when he feels aggrieved by the entry and it is the satisfaction of such person as to when he feels aggrieved. Defendant cannot be heard to say that he (the plaintiff) felt aggrieved by the entry at some earlier point of time or when the entry was actually made.

43. The plaintiffs claimed that the defendant started interfering with their possession based on the wrong revenue entries. H.S. Katoch (PW1) stated that the defendant wanted to take forcible possession from the plaintiffs. Sant Ram, the plaintiffs' predecessor, was found to be in possession as per the report (Ex DW2/A) and the plaintiffs were only required to file the suit on the interference. Hence, the suit cannot be said to be barred by limitation, and this substantial question of law is answered accordingly.

Substantial Question of Law No. 4:

44. The defendant had only tendered Ex DA in additional evidence as per the statement dated 02.9.2006. Ex Dx, Ex Dy or Ex Dz were not tendered in additional evidence, and the same could not have been considered by the learned Appellate Court and the judgment passed by the learned Appellate Court is not vitiated on this account. Hence, this substantial question of law is answered accordingly.

Final Order:

45. In view of the above, the present appeal fails and is dismissed.

46. The appeal stands disposed of, so also the pending application(s), if any.

47. Records of the learned Courts below be sent down forthwith.

(Rakesh Kainthla)
Judge

6th August, 2026
(Nikita)