IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. : 729 of 2025
Reserved On : 13.07.2026
Decided On : 30.07.2026
Uploaded On : 30.07.2026

Nirmala Thapa & Anr. ...Petitioners

Versus

Akshay Thapa ...Respondent

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?[1]

For the petitioners : Mr. R.K. Gautam, Senior Advocate, with Mr. Sahil Dixit, Advocate.

For the respondent : Mr. Ajay Sharma, Senior Advocate, with Mr. Tarun K. Brakta, Advocate.

Virender Singh, Judge

The petitioners have filed the present petition under Article 227 of the Constitution of India, against the order dated 02.06.2025, passed by the Court of learned District Judge, Kangra at Dharamshala, District Kangra, H.P. (hereinafter referred to as 'the first appellate Court'), in Civil Misc. Appeal No. 04-D/XIV/2024, titled as "Akshay Thapa Versus Nirmla Thapa & Anr.".

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

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2. By way of order dated 02.06.2025, the learned first appellate Court has allowed the appeal preferred by the respondent Akshay Thapa, which, he had preferred against the order dated 20.01.2024, passed by the Court of learned Civil Judge, Court No. 1 Dharamshala, District Kangra, H.P. (hereinafter referred to as 'the trial Court'), in CMA No. 20/D/2022 (application under Order 39 Rules 1 and 2 CPC), filed in Civil Suit No. 20/D/2022, titled as 'Akshay Thapa Versus Nirmla Thapa & Anr.'.

3. By way of order dated 20.01.2024, the learned trial Court has dismissed the application under Order 39, Rules 1 and 2 CPC, filed by the respondent, in the above titled case.

4. For the sake of convenience, the parties to the present *lis,* are, hereinafter referred to, in the same manner, as were, referred to, by the learned trial Court.

5. Brief facts, leading to the filing of the present petition before this Court, may be summed up, as under:-

5.1 Plaintiff Akshay Thapa has filed a suit under Section 31 of the Specific Relief Act, for cancellation of the Family Settlement Deed dated 15.02.2021 and for setting aside Mutation No. 2349 of inheritance dated 12.11.2020

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and Mutation No. 2377 dated 25.02.2021 attested and sanctioned on the basis of family settlement deed and to cancel the Will dated 15.02.2019, which was registered on 15.02.2021, qua the land comprising Khata No. 228, Khatauni No. 400, Khasra Nos. 1686/358 and 360 (Kitas 2) measuring 00-09-87 hectares, situated at Mohal Sidhpur, Mauza Khaniyara, Tehsil Dharamshala, District Kangra, H.P. (hereinafter referred to as 'the suit land'), by declaring the family settlement deed and Will as null, void, ineffective, non est and not binding upon the rights of the plaintiff. In addition to this, he has also sought the decree for permanent prohibitory injunction, restraining the defendants not to alienate the suit land, and not to create any third party right, changing the nature and possession of the suit land, in any manner.

5.2 The said suit has been filed, on the ground, that the father of the plaintiff, namely, Sh. Birender Singh Thapa, son of Sh. Garv Singh, son of Sh. Kishan Veer, was owner of the suit land, whereas plaintiff and defendant No. 2 are real brothers and defendant No. 1 is their mother. The suit land was self acquired property of Sh. Birender Singh Thapa, upon which, he had raised construction of

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double storeyed house. All these facts have been pleaded to demonstrate that defendant No. 1 has no vested right in the suit land.

5.3 It is the further case of the plaintiff that his father had executed the Will dated 13.11.2018 in favour of defendant No. 1, with the condition that she will be the owner of the suit land, during her life time, however, in the Will dated 13.11.2018, it was made clear that after the death of defendant No. 1, the suit land will become the property of plaintiff and defendant No. 2, in equal shares. The testator, during his life time, also divided the residential house by allotting the ground floor to the plaintiff with equal share in the vacant land. The predecessor-in-interest of the parties, expired on 20.01.2020

5.4 It is the further case of the plaintiff that defendant No. 2, by applying the influence upon defendant No. 1, got executed the Will dated 15.09.2019, in his favour, during the life time of Sh. Birender Singh Thapa and the said Will was got registered on 15.02.2021, i.e. after two years of its execution. At the time of registration of this Will, no notice was given to the plaintiff and the Will

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was wrongly registered in his absence. At the time of registration of the Will, the Registration Authorities have not taken into consideration that the Will is dated 15.02.2019 and at that point of time, defendant No. 1 has no right, title and interest in the suit land.

5.5 Highly relying upon the Will dated 13.11.2018, by virtue of which, the Will, in favour of defendant No. 1, was for enjoying the suit land, during her life time without any right of alienation, a prayer has been made to grant the relief, as claimed.

5.6 Along with the suit, an application under Order 39 Rules 1 and 2 CPC has also been filed by the plaintiff.

6. When put to notice, the suit, as well as, application under Order 39 Rules 1 and 2 CPC have been contested by the defendants.

6.1 Defendant No. 1 has filed her separate written statement, by taking preliminary objections that the suit is not maintainable, suit is malafide and the plaintiff has not approached this Court with clean hands, suit has been filed just to harass the defendants, suit is premature, as the plaintiff has no right to challenge the registered Will dated 15.02.2021, during the life time of defendant No. 1.

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The registered Will dated 15.02.2021, is a sacred document and the executor of the said Will is defendant No. 1 herself, suit is not properly valued for the purpose of Court fees and jurisdiction, the Civil Court has no jurisdiction, as the plaintiff has not challenged mutation No. 2349, the plaintiff is estopped by his own act, conduct, acquiescence and silence; and plaintiff has no cause of action and locus standi to file the present suit.

6.2 On merits, the factual position, qua the fact, that defendant No. 1 had inherited the suit land from her husband, vide registered Will dated 13.11.2018, which has not been disputed. However, she had become absolute owner in possession of the suit land. She had served her husband during his life time, whereas, the plaintiff was living outside since 1993. It was only defendant No. 2, who was serving his parents. The execution of Will in her favour has been admitted, but no condition has been imposed in the said Will. Reasserting the fact that she had inherited the suit land as absolute owner, a prayer has been made that the Will does not prescribe a restricted estate in favour of defendant No. 1. It has been asserted that the suit land was given to defendant No. 1 in lieu of

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her pre-existing right of maintenance. She has also asserted that she had executed the Will dated 15.02.2021, in favour of defendant No. 2.

7. Similar stand has been taken by defendant No. 2.

8. Plaintiff filed the replication, denying the preliminary objections, as well as, the contents of the written statement.

9. The learned trial Court, vide order dated 20.01.2024, has dismissed the application, by holding that the plaintiff has miserably failed to establish the prima facie case, balance of convenience and irreparable loss.

10. The said findings have been assailed by the plaintiff, by way of Civil Misc. Appeal, before the learned first appellate Court. The learned first appellate Court, vide order dated 02.06.2025, has allowed the appeal and set aside the order passed by learned trial Court and the application under Order 39 Rules 1 and 2 C.P.C., has been allowed, restraining the defendants from alienating and changing the nature of the suit land, during the pendency of the lis.

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11. Feeling aggrieved from the order, dated 02.06.2025, present petition has been filed, before this Court.

12. On the basis of the grounds of appeal, a prayer has been made to allow the petition, by setting aside the order passed by the learned First Appellate Court.

13. The learned First Appellate Court, has ordered the parties to maintain status quo, as referred to above, whereas, learned trial Court, in the present case has dismissed the application, under Order 39, Rules 1 and 2 CPC.

14. In this factual background, this Court, while exercising the supervisory powers, has to consider the fact, whether the learned trial Court, has rightly exercised, the jurisdiction vested in it, or exceeded its jurisdiction, under Order 43, Rule 1, of CPC.

15. Hon'ble Supreme Court, in case, titled as **Ramakant Ambalal Choksi versus Harish Ambalal Choksi and others**, reported in **2024 INSC 913**, has elaborately discussed the powers of the learned Appellate Courts, under Order 43 Rule 1 of CPC. Relevant paragraphs 20 to 32 are reproduced as under:-

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20. Order 43 of the CPC specifies the orders against which an appeal lies. SubRule (r) of Rule 1 of the said order provides that an appeal would lie against an order made under Rules 1, 2, 2A, 4 and 10 of Order 39 of the CPC respectively.

21. The law in relation to the scope of an appeal against grant or non-grant of interim injunction was laid down by this Court in Wander Ltd. v. Antox India P. Ltd. reported in 1990 Supp SCC 727. Antox brought an action of passing off against Wander with respect to the mark Cal-De-Ce. The trial court declined Antox's plea for an interim injunction, however, on appeal the High Court reversed the findings of the trial judge. This Court, upon due consideration of the matter, took notice of two egregious errors said to have been committed by the High Court:
a. First, as regards the scope and nature of the appeals before it and the limitations on the powers of the appellate court to substitute its own discretion in an appeal preferred against a discretionary order; and
b. Secondly, the weakness in ratiocination as to the quality of Antox's alleged user of the trademark on which the passing off action is founded.

22. With regards to (a), this Court held thus:
"In such appeals, the appellate court will not interfere with the exercise of discretion of the court of the first instance and substitute its own discretion, except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely, or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions … the appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below … If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion."

23. This Court, while arriving at the above findings, relied on its earlier judgment in Printers (Mysore) v Pothan Joseph reported in

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(1960) SCC Online SC 62 where it was held thus:

"[...] as has been observed by Viscount Simon LC in Charles Osenton & Co v Johnston – the law as to reversal by a court of appeal of an order made by a judge below in the exercise of his/her discretion is well established, and any difficulty that arises is due only to the application of well-settled principles in an individual case."

24. It is pertinent to note that in Printers (supra) this Court had held that ignoring relevant facts is also a ground for interfering with the discretion exercised by the trial court. Furthermore, Viscount Simon LC in Charles Osenton & Co v Johnston reported in 1942 A.C. 130, after stating the above, went on to quote Lord Wright's decision in Evans v. Bartlam reported in 1937 A.C. 473:

"It is clear that the court of appeal should not interfere with the discretion of a judge acting within his jurisdiction unless the court is clearly satisfied that he was wrong. But the court is not entitled simply to say that if the judge had jurisdiction and had all the facts before him, the court of appeal cannot review his order unless he is shown to have 14 applied a wrong principle. The court must, if necessary, examine anew the relevant facts and circumstances in order to exercise a discretion by way of review which may reverse or vary the order."

25. In Evans (supra) case, Lord Wright made it clear that while adjudicating upon the discretion exercised by the trial court, the appellate court is obliged to consider the case put forward by the appellant in favour of its argument that the trial court exercised its discretion arbitrarily or incorrectly in the circumstances.

26. What flows from a plain reading of the decisions in Evans (supra) and Charles Osenton (supra) is that an appellate court, even while deciding an appeal against a discretionary order granting an interim injunction, has to: a. Examine whether the discretion has been properly exercised, i.e. examine whether the discretion exercised is not arbitrary, capricious or contrary to the

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principles of law; and b. In addition to the above, an appellate court may in a given case have to adjudicate on facts even in such discretionary orders.

27. The principles of law explained by this Court in Wander's (supra) have been reiterated in a number of subsequent decisions of this Court. However, over a period of time the test laid down by this Court as regards the scope of interference has been made more stringent. The emphasis is now more on perversity rather than a mere error of fact or law in the order granting injunction pending the final adjudication of the suit.

28. In Neon Laboratories Ltd. v. Medical Technologies Ltd. reported in (2016) 2 SCC 672 this Court held that the Appellate Court should not flimsily, whimsically or lightly interfere in the exercise of discretion by a subordinate court unless such exercise is palpably perverse. Perversity can pertain to the understanding of law or the appreciation of pleadings or evidence. In other words, the Court took the view that to interfere against an order granting or declining to grant a temporary injunction, perversity has to be demonstrated in the finding of the trial court.

29. In Mohd. Mehtab Khan v. Khushnuma Ibrahim Khan reported in (2013) 9 SCC 221 this Court emphasised on the principles laid down in Wander (supra) and observed that while the view taken by the appellate court may be an equally possible view, the mere possibility of taking such a view must not form the basis for setting aside the decision arrived at by the trial court in exercise of its discretion under Order 39 of the CPC. The basis for substituting the view of the trial court should be malafides, capriciousness, arbitrariness or perversity in the order of the trial court. The relevant observations are extracted below:

"20. In a situation where the learned trial court on a consideration of the respective cases of the parties and the documents laid before it was of the view that the entitlement of the plaintiffs to an order of interim mandatory injunction was in serious doubt, the Appellate Court could not have interfered

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with the exercise of discretion by the learned Trial Judge unless such exercise was found to be palpably incorrect or untenable. The reasons that weighed with the learned Trial Judge, as already noticed, according to us, do not indicate that the view taken is not a possible view. The Appellate Court, therefore, should not have substituted its views in the matter merely on the ground that in its opinion the facts of the case call for a different conclusion. Such an exercise is not the correct parameter for exercise of jurisdiction while hearing an appeal against a discretionary order. While we must not be understood to have said that the Appellate Court was wrong in its conclusions what is sought to be emphasized is that as long as the 16 view of the trial court was a possible view the Appellate Court should not have interfered with the same following the virtually settled principles of law in this regard as laid down by this Court in Wander Ltd. v. Antox India (P) Ltd."

(Emphasis supplied)

30. This Court in Shyam Sel & Power Ltd. v. Shyam Steel Industries Ltd. reported in (2023) 1 SCC 634 observed that the hierarchy of the trial court and the appellate court exists so that the trial court exercises its discretion upon the settled principles of law. An appellate court, after the findings of the trial court are recorded, has an advantage of appreciating the view taken by the trial judge and examining the correctness or otherwise thereof within the limited area available. It further observed that if the appellate court itself decides the matters required to be decided by the trial court, there would be no necessity to have the hierarchy of courts.

31. This Court in Monsanto Technology LLC v. Nuziveedu Seeds Ltd. reported in (2019) 3 SCC 381, observed that the appellate court should not usurp the jurisdiction of the Single Judge to decide as to whether the tests of prima facie case, balance of convenience and irreparable injury are made out in the case or not.

32. The appellate court in an appeal from an interlocutory order granting or declining to

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> *grant interim injunction is only required to adjudicate the validity of such order applying the well settled principles governing the scope of jurisdiction of appellate court under Order 43 of the CPC which have been reiterated in various other decisions of this Court. The appellate court should 17 not assume unlimited jurisdiction and should guide its powers within the contours laid down in the Wander (supra) case."*
>
> *(Self emphasis supplied)*

16. Judging the facts and circumstances of the present case, in light of the decision of Hon'ble Supreme Court, there is no legal hesitation, for this Court to hold that the learned first appellate Court, has acted like a trial Court and has considered the entire case de novo, instead of recording the findings, upon which, it can be said that the order passed by the learned trial Court is perverse.

17. The term 'perverse' has also been discussed by the Hon'ble Supreme Court in '***Arulvelu and Another Versus State represented by the Public Prosecutor and Another***', reported in ***(2009) 10 Supreme Court Cases 206***. Relevant paragraphs 22 to 30 of the said judgment are reproduced, as under:-

> *"22. We have carefully perused the judgment of the trial court and the impugned judgment of the High Court. The trial court very minutely examined the entire evidence and all documents and exhibits on record. The trial court's analysis of evidence also seems to be correct. The trial*

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court has not deviated from the normal norms or methods of evaluation of the evidence. By no stretch of imagination, we can hold that the judgment of the trial court is based on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it and consequently the judgment of the trial court is perverse.

23. We also fail to arrive at the conclusion that the discussion and appreciation of the evidence of the trial court is so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse and the findings rendered by the trial court are against the weight of evidence. The law is well settled that, in an appeal against acquittal, unless the judgment of the trial court is perverse, the Appellate Court would not be justified in substituting its own view and reverse the judgment of acquittal.

24. The expression `perverse' has been dealt with in number of cases. In Gaya Din (Dead) through LRs. & Others v. Hanuman Prasad (Dead) through LRs. & Others, this Court observed that the expression `perverse' means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity.

25. In Parry's (Calcutta) Employees' Union v. Parry & Co. Ltd. & Others, the Court observed that `perverse finding' means a finding which is not only against the weight of evidence but is altogether against the evidence itself. In Triveni Rubber & Plastics v. Collector of Central Excise, Cochin, the Court observed that this is not a case where it can be said that the findings of the authorities are based on no evidence or that they are so perverse that no reasonable person would have arrived at those findings.

26. In M. S. Narayanagouda v. Girijamma & Another, the Court observed that any order

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made in conscious violation of pleading and law is a perverse order. In Moffett v. Gough, the Court observed that a perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In Godfrey v. Godfrey, the Court defined `perverse' as turned the wrong way, not right; distorted from the right; turned away or deviating from what is right, proper, correct etc.

27. The expression "perverse" has been defined by various dictionaries in the following manner:

1. Oxford Advanced Learner's Dictionary of Current English Sixth Edition
Perverse: Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable.

2. Longman Dictionary of Contemporary English –
International Edition
Perverse: Deliberately departing from what is normal and reasonable.

3. The New Oxford Dictionary of English - 1998 Edition
Perverse: Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.

4. New Webster's Dictionary of the English Language (Deluxe Encyclopedic Edition)
Perverse: Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.

5. Stroud's Judicial Dictionary of Words & Phrases, Fourth Edition
Perverse: A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

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28. In Shailendra Pratap & Another v. State of U.P., the Court observed thus:

> *"8. … We are of the opinion that the trial court was quite justified in acquitting the appellants of the charges as the view taken by it was reasonable one and the order of acquittal cannot be said to be perverse. It is well settled that appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. In the present case, the High Court has committed an error in interfering with the order of acquittal of the appellants recorded by the trial court as the same did not suffer from the vice of perversity."*

29. In Kuldeep Singh v. The Commissioner of Police & Others, the Court while dealing with the scope of Articles 32 and 226 of the Constitution observed as under:

> *"9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.*
>
> *10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."*

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30. The meaning of `perverse' has been examined in H. B. Gandhi, Excise and Taxation Officer-cum- Assessing Authority, Karnal & Others v. Gopi Nath & Sons & Others 1992, this Court observed as under:

> *"7. In the present case, the stage at and the points on which the challenge to the assessment in judicial review was raised and entertained was not appropriate. In our opinion, the High Court was in error in constituting itself into a court of appeal against the assessment. While it was open to the respondent to have raised and for the High Court to have considered whether the denial of relief under the proviso to Section 39(5) was proper or not, it was not open to the High Court re-appreciate the primary or perceptive facts which were otherwise within the domain of the fact-finding authority under the statute. The question whether the transactions were or were not sales exigible to sales tax constituted an exercise in recording secondary or inferential facts based on primary facts found by the statutory authorities. But what was assailed in review was, in substance, the correctness - as distinguished from the legal permissibility - of the primary or perceptive facts themselves. It is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law."*
>
> *The term "perverse" has duly been elaborated by the Hon'ble Supreme Court in '**Arulvelu***

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and Another Versus State represented by the Public Prosecutor and Another', *reported in* ***(2009) 10 Supreme Court Cases 206****. Relevant paragraphs 22 to 30 of the said judgment are reproduced, as under:-*

"22. We have carefully perused the judgment of the trial court and the impugned judgment of the High Court. The trial court very minutely examined the entire evidence and all documents and exhibits on record. The trial court's analysis of evidence also seems to be correct. The trial court has not deviated from the normal norms or methods of evaluation of the evidence. By no stretch of imagination, we can hold that the judgment of the trial court is based on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it and consequently the judgment of the trial court is perverse.

23. We also fail to arrive at the conclusion that the discussion and appreciation of the evidence of the trial court is so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse and the findings rendered by the trial court are against the weight of evidence. The law is well settled that, in an appeal against acquittal, unless the judgment of the trial court is perverse, the Appellate Court would not be justified in substituting its own view and reverse the judgment of acquittal.

24. The expression `perverse' has been dealt with in number of cases. In Gaya Din (Dead) through LRs. & Others v. Hanuman Prasad (Dead) through LRs. & Others, this Court observed that the expression `perverse' means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity.

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> *"8. ... We are of the opinion that the trial court was quite justified in acquitting the appellants of the charges as the view taken by it was reasonable one and the order of acquittal cannot be said to be perverse. It is well settled that appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. In the present case, the High Court has committed an error in interfering with the order of acquittal of the appellants recorded by the trial court as the same did not suffer from the vice of perversity."*

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> *10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with."*

30. The meaning of `perverse' has been examined in H. B. Gandhi, Excise and Taxation Officer-cum- Assessing Authority, Karnal & Others v. Gopi Nath & Sons & Others 1992, this Court observed as under:

> *"7. In the present case, the stage at and the points on which the challenge to the assessment in judicial review was raised and entertained was not appropriate. In our opinion, the High Court was in error in constituting itself into a court of appeal against the assessment. While it was open to the respondent to have raised and for the High Court to have considered whether the denial of relief under the proviso to Section 39(5) was proper or not, it was not open to the High Court re-appreciate the primary or perceptive facts which were otherwise within the domain of the fact-finding authority under the statute. The question whether the transactions were or were not sales exigible to sales tax constituted an exercise in recording secondary or inferential facts based on primary facts found by the statutory authorities. But what was assaile.*

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18. Similar view has again been taken by the Hon'ble Supreme Court in '***S.R. Tewari Versus Union of India and Another'***, reported in ***(2013) 6 Supreme Court Cases 602***. Relevant paragraph 30 of the said judgment is reproduced, as under:-

> *"30. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with. (Vide: Rajinder Kumar Kindra v. Delhi Administration, Kuldeep Singh v. Commissioner of Police & Ors., Gamini Bala Koteswara Rao & Ors. v. State of Andhra Pradesh thr. Secretary and Babu v. State of Kerala)."*

19. Even otherwise, the expression 'perverse' has deliberately been explained, by the Hon'ble Supreme Court in case, titled as **Ramakant Ambalal Choksi's** case (supra). Relevant paragraphs 35 to 37, of the judgment, are reproduced, as under:-

> *"35.Any order made in conscious violation of pleading and law is a perverse order. In*

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Moffett v. Gough reported in (1878) 1 LR 1r 331, the Court observed that a perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In Godfrey v. Godfrey reported in 106 NW 814, the Court defined "perverse" as "turned the wrong way"; not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.

36.The expression "perverse" has been defined by various dictionaries in the following manner:
a. Oxford Advanced Learner's Dictionary of Current English, 6th Ed. Perverse-Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable.
b. Longman Dictionary of Contemporary English - International Edition Perverse - Deliberately departing from what is normal and reasonable.
c. The New Oxford Dictionary of English - 1998 Edition Perverse - Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.
d. New Webster's Dictionary of the English Language (Deluxe Encyclopedic Edition) Perverse - Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.
e. Stroud's Judicial Dictionary of Words & Phrases, 4th Ed. Perverse - A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

37.The wrong finding should stem out on a complete misreading of evidence or it should be based only on conjectures and surmises. Safest approach on perversity is the classic approach on the reasonable man's inference on the facts. To him, if the conclusion on the facts in evidence made by the court below is possible, there is no perversity. If not, the finding is perverse. Inadequacy of evidence or a different reading of evidence is not perversity. (See: Damodar Lal v. Sohan Devi and others reported in (2016) 3 SCC 78)"

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20. In this case, an application under Order 39 Rules 1 and 2 CPC, moved by the plaintiff Akshay Thapa, was dismissed by the learned trial Court, however, the learned first appellate Court has allowed the said application.

21. Plaintiff Akshay Thapa in the suit has challenged the Will dated 15.02.2019, executed by defendant No. 1 in favour of defendant No. 2. The document i.e. Will, will come into play after the death of the testator/executor of the Will, as the case may be. When defendant No. 1 is alive, then, how the plaintiff can seek the relief of cancellation of the Will dated 15.02.2019, allegedly executed by defendant No. 1 in favour of defendant No. 2. The learned trial Court, in the present case, has rightly considered the stand of defendant No. 1.

22. Moreover, the suit of the plaintiff is not maintainable qua the challenge to Will dated 15.02.2019, during the life time of defendant No. 1.

23. The copy of the Will, which is stated to be executed by the father of the plaintiff i.e. Sh. Birender Singh Thapa, has also been annexed with the petition, in

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which, the testator has expressed his intention that after his death, two storeyed building is to be given to both his sons in equal share, whereas in the opening lines, he has bequeathed his entire estate in favour of defendant No. 1. In such situation, the plaintiff has to prove before the learned trial Court that the limited estate was given to defendant No. 1 or the intention of the testator was otherwise.

24. These complicated questions cannot be decided in the proceedings, under Order 39 Rules 1 and 2 CPC, as such, learned first Appellate Court has exceeded its jurisdiction by giving the findings qua interpretation of the clauses of the Will, which is the sole domain of learned trial Court, that too, at the time of deciding the suit, as instituted by the plaintiff.

25. In view of the above, this Court is of the view that the learned first appellate Court has exceeded its jurisdiction by allowing the appeal, as, at the time of deciding the appeal, the learned first appellate Court was not exercising the power of trial Court, nor the findings have been recorded by learned first appellate Court that the decision of learned trial Court suffers from perversity,

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which is liable to be interfered with. In such situation, the order passed by the learned first appellate Court is not sustainable in the eyes of law.

26. Consequently, the present appeal is allowed, as prayed for. The application under Order 39 Rules 1 and 2 CPC, filed by the plaintiff is ordered to be dismissed. The order passed by the learned First Appellate Court is set-aside and the order passed by the learned trial Court is ordered to be restored.

27. Any of the observations, made hereinabove, shall not be taken, as an expression of opinion, on the merits of the case, as these observations are confined, only to the disposal of the present petition.

28. Pending application(s), if any, shall also stand(s) disposed of.

29. Record be sent back.

(Virender Singh)
Judge

30th July, 2026
(*Pramod Kumar*)

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