2026:HHC:12194

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 229/2024
Reserved on: 6.4.2026
Decided on: 17.04.2026

State of H.P. & anr. .....Appellants

Versus

Inderjeet .....Respondent

Coram

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

Whether approved for reporting ?[1]

For the appellants: Mr. Diwakar Dev Sharma, Addl. A.G.

For the respondent: Mr. Arun Kaushal, Advocate.

Romesh Verma, Judge

The present appeal arises out of the judgment and decree, dated 6.11.2019, as passed by the learned District Judge, Hamirpur, H.P. in C. A. No. 133/2017, whereby the appeal preferred by the present appellants/defendants has been partly allowed and the judgment and decree dated 1.9.2017, as passed by the learned Senior Civil Judge, Hamirpur, H.P. in Civil Suit No. 184/2009, have been

[1] *Whether reporters of Local Papers may be allowed to see the Judgment ?Yes*

modified, decreeing the suit of the plaintiff for vacant possession of the suit land comprised in Khewat No. 242, Khatauni No. 250, Khasra No. 1088, previous Khasra No. 756 min, measuring 0-00-22 hectares and Khewat No.243, Khatauni No. 251, Khasra No.1199, previous Khasra No.758, measuring 0-07-27 hectares, situated in Village Hatli, Tehsil Nadaun, District Hamirpur, H.P.

2 Brief facts of the case are that the plaintiff/respondent filed a suit for possession under Section 6 of the Specific Relief Act. It was averred in the plaint that the plaintiff is recorded as owner in possession of the suit land. Though he is recorded as joint owner in possession of the suit land along with other co-sharers, however he is an absolute owner of the same by way of family arrangement. The suit land has been utilized by the defendants/appellants i.e. State of Himachal Pradesh, for construction of road, namely "Dhanet Hamirpur via Kangoo Galore Road" and nature of the suit land is being depicted in the revenue record as "Gair Mumkin Sarak". It was further averred that neither the defendants/appellants acquired the suit land nor they paid any compensation to the plaintiff/respondent. When the protest was made by the plaintiff/respondent

against the use and utilization of the suit land, the State Government initiated acquisition proceedings and requisite notifications were also issued. One of such notifications was published in Danik Tribune on 6.3.2001, however the same was allowed to lapse and was not taken to its logical end. Though, the plaintiff/respondent was made to understand that the acquisition process shall be finalized and adequate compensation shall be paid to him, but nothing was done qua the same, therefore, the plaintiff filed a suit for recovery of vacant possession of the suit land.

3 The suit was contested by the defendants/appellants by raising preliminary objections with regard to maintainability, cause of action, locus standi, non-joinder of necessary party, estoppel etc. On merits, it was averred that the suit land was recorded as "Gair Mumkin Sarak" and the defendants/appellants utilized the suit land for the construction of "Dhanet Hamirpur via Kangoo Galore Road". The aforesaid road was constructed before 1980 and the same was done with oral consent of the plaintiff/respondent and other co-sharers. It was further averred that it is not possible to acquire the suit land at

such a belated stage that too after elapse of more than 30 years.

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

5 On the pleadings of the parties, the learned trial court on 18.11.2010 framed the following issues:-

1. Whether the plaintiff is entitled for the relief of vacant possession, as claimed? OPP
2. Whether the suit is not maintainable, as alleged? OPD
3. Whether the plaintiff has no cause of action to file the present suit, as alleged? OPD
4. Whether the plaintiff has no locus standi to file the present suit, as alleged? OPD
5. Whether the suit is bad for non-joinder and mis-joinder of necessary parties, as alleged? OPD
6. Whether the plaintiff is estopped by his own act, conduct and acquiescence, as alleged? OPD
7. Whether the road has been constructed with the consent of plaintiff and other co-owners. Hence, the plaintiff is not entitled for relief of possession, as claimed? OPD
8. Relief.

6 The learned trial court directed the parties to adduce evidence in support of their contentions to

corroborate their respective case and ultimately, the learned trial court vide its judgment and decree dated 1.9.2017 decreed the suit of the plaintiff/respondent directing the defendants/appellants to complete the acquisition proceedings and pay the compensation to the plaintiff/respondent equal to his share in the suit land within one year and in failure to do so, the plaintiff/respondent was held entitled for vacant possession of the suit land and the execution was ordered to be followed against the defendants/appellants on their cost.

7 Feeling dissatisfied by the judgment and decree, dated 1.9.2017, the defendants/appellants preferred an appeal before the learned first Appellate Court on 16.10.2017, which came to be partly allowed vide judgment and decree dated 6.11.2009, as aforesaid.

8 Still feeling aggrieved by the aforesaid judgments and decrees, the defendants/appellants have preferred the present regular second appeal.

9 It is contended by Mr. Diwakar Dev Sharma, learned Additional Advocate General, appearing for the appellants/State that the impugned judgments and decrees, as passed by the learned Courts below, are erroneous and

liable to be quashed and set aside. He has submitted that since the respondent has given his oral consent for the construction of the road in question, therefore, suit is liable to be rejected. He has further submitted that the road in question was constructed way back in the year 1980, therefore, the suit filed by the plaintiff/respondent, is hopelessly time barred and on this sole ground, suit ought to have been rejected.

10 On the other hand, Mr. Arun Kaushal, learned counsel appearing for the respondent, has defended the judgments and decrees as passed by the learned courts below and has submitted that since the land of the respondent was utilized for the construction of the road in question, therefore, in view of the mandate as laid down by the Hon'ble Supreme Court, whereby it has been repeatedly held that no person can be deprived of his property without following the due process of law, the impugned judgments and decrees deserve to be upheld. He has further submitted that once the defendants/appellants have utilized the suit land, being owned by the plaintiff/respondent, it was incumbent upon the defendants/appellants either to have paid the

compensation or to have handed over vacant possession of the suit land.

11 I have heard the learned counsel for the parties and have also gone through case file.

12 With consent of the parties, the instant appeal is finally disposed of at the admission stage.

13 Admittedly, in the present case, the suit land being owned by the plaintiff/respondent has been utilized by the defendants/State for the construction of road i.e. “Dhanet Hamirpur via Kangoo Galore Road”.

14 In order to substantiate his case, the plaintiff/respondent has examined three witnesses including himself and also tendered in evidence copy of Missal Hakiyat Bandobast Jadid Sani, Ext. P-1, copy of Missal Hakiyat Bandobast, Ext. P-II, Legal Notice Ext. PX, Postal Receipt Ext. PY, copy of Tatima Ext. P-3, Missal Hakiyat Istemal Ext. P-IV to Ext. P-VIII and notifications, Ext. PW3A, Ext. PW3/B and Ext. PW3/C.

15 In order to controvert the case of the plaintiff/respondent, the defendant has taken stand that road in question was constructed by the State of Himachal Pradesh on the oral and express consent of the

plaintiff/respondent. It is averred that though the road was constructed way back in the year 1980, therefore, the suit in the present form is belated and the claim, as projected by the plaintiff/respondent, is stale.

16 The defendants/appellants in order substantiate their case examined two witnesses, namely, DW1 Shiv Kumar and DW2 Joginder Pal.

17 DW1 Shiv Kumar deposed that neither any person nor plaintiff or his co-sharers ever objected to construction of the road in question.

18 DW2 Joginder Pal has also deposed that the road in question was constructed with the consent of the people. He also stated that the great grand-mother of the plaintiff, namely, Udku Devi, had also not raised any objection. Even when the road was being metalled, no person had objected.

19 Missal Hakiyat Bandobast Jadid Sani, Ext.P-1 for the year 2003-04 reveals that the suit land is owned and possessed by the plaintiff/respondent along with other co-sharers. In the revenue record, the suit land is being depicted as “Gair Mumkin Sarak”. The road in question is passing through the suit land.

20 It has been vehemently argued by the learned Additional Advocate General that the plaintiff/respondent has orally consented for the construction of the road in question, however I find no force in the aforesaid submission as admittedly, the defendants/appellants are not in possession of any document to show that the plaintiff/respondent had ever consented for construction of road in question through the suit land.

21 It has come in the statement of PW1 Vipin Kumar Kanungo that a notification, Ext. PW3/C was issued by the State Government for acquiring the suit land. Though in his cross-examination he stated that Khasra No.756 was not mentioned in notification, Ext.PW3/C, however he clarified that Khasra numbers were mentioned as per Jamabandi for the year 1996-97.

22 As regards missal Hakiat for the year 1991-92, Khasra No. 756 was having earlier Khasra No. 677 and Khasra No. 1088 was having earlier Khasra No. 756. Perusal of notification, Ext. PW3/C would go to show that Khasra No. 756 has been mentioned therein meaning thereby the notification had been issued qua acquisition of Khasra No.756 i.e. suit land.

23 In case the plaintiff or any of his co-sharers had ever consented for the construction of the road in question, as is claimed by the defendants/appellants, then what was the necessity to have issued notification, Ext. PW3/C for acquisition of Khasra No.756, which is the suit land. Thus, notification, Ext. PW3/C itself falsifies the unsubstantiated stand qua consent taken by the defendants/appellants for acquisition of the suit land for the construction of the road in question.

24 The defendants/appellants are constituents of a welfare State. It is well settled that the welfare State cannot claim adverse possession against its citizens. Thus, the suit on the basis of title cannot be said to be time barred, which right could only be defeated by proof of perfection of title by way of adverse possession by the other.

25 As observed above, the respondent/plaintiff is the title holder of the suit property. Being owner of the suit property, he may file a suit at any stage until and unless the said right is defeated by the appellants/defendants by perfection of title by way of adverse possession. Thus, the plaintiff/respondent was well within his right to file a suit for possession since the suit land was admittedly utilized by

the State for construction of the road in question without adopting due process of law including the payment of compensation.

26 The learned first Appellate Court below after appreciating the oral as well as documentary evidence placed on record and on the basis of the title decreed the suit as filed by the respondent for vacant possession of the suit land, which has been admittedly utilized by the defendants/appellants for the construction of the road in question.

27 The Hon'ble Supreme Court has repeatedly held that no person can be deprived of his property without adopting due process of law, therefore, under such circumstances, the plea as set up by the appellants-State is not tenable in the facts and circumstances of the case, once they have utilized the land of the villagers without adopting due process of law. Now the plea as raised by the present appellants is not permissible that too at the stage of Regular Second Appeal. There are concurrent findings of fact by the learned Courts below.

28 In catena of judgments, it has been held by the Hon'ble Supreme Court that the first appellate is the final

court of the fact. No doubt, second appellate court exercising the power under Section 100 CPC can interference with the findings of fact on limited grounds such as - (a) where the finding is based on inadmissible evidence; (b) where it is in ignorance of the relevant admissible evidence; (c) where it is based on misreading of evidence; (d) where it is perverse, but that is not case in hand.

29 The Hon'ble Supreme Court while dealing with scope of interference under Section 100 in ***Hero Vinoth (minor) vs. Seshammal, (2006) 5 SCC 545*** has held as under:

> *"18. It has been noted time and again that without insisting for the statement of such a substantial question of law in the memorandum of appeal and formulating the same at the time of admission, the High Courts have been issuing notices and generally deciding the second appeals without adhering to the procedure prescribed under Section 100 of the CPC. It has further been found in a number of cases that no efforts are made to distinguish between a question of law and a substantial question of law. In exercise of the powers under this section in several cases, the findings of fact of the first appellate court are found to have been disturbed. It has to be kept in mind that the right of appeal is neither a natural nor an inherent right attached to the litigation. Being a substantive statutory right, it has to be regulated in accordance with law in*

force at the relevant time. The conditions mentioned in the section must be strictly fulfilled before a second appeal can be maintained and no court has the power to add or to enlarge those grounds. The second appeal cannot be decided on merely equitable grounds. The concurrent findings of facts will not be disturbed by the High Court in exercise of the powers under this section. Further, a substantial question of law has to be distinguished from a substantial question of fact. This Court in Sir Chunilal V. Mehta and Sons Ltd. v. Century Spg. & Mfg. Co. Ltd. (AIR 1962 SC 1314) held that : "The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law.

19. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is true that the lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the

same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences of fact are possible, one drawn by the lower appellate court will not be interfered by the High Court in second appeal. Adopting any other approach is not permissible. The High Court will, however, interfere where 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 by ignoring material evidence.

20. to 22 xx xx xx xx

23. To be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law "involving in the case" there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not; the paramount overall consideration being

the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis."

30 The Hon'ble Supreme Court in ***Annamalai vs. Vasanthi, 2025 INSC 1267,*** has held as follows:-

"16. Whether D-1 and D-2 were able to discharge the aforesaid burden is a question of fact which had to be determined by a court of fact after appreciating the evidence available on record. Under CPC, a first appellate court is the final court of fact. No doubt, a second appellate court exercising power(s) under Section 100 CPC can interfere with a finding of fact on limited grounds, such as, (a) where the finding is based on inadmissible evidence; (b) where it is in ignorance of relevant admissible evidence; (c) where it is based on misreading of evidence; and (d) where it is perverse. But that is not the case here.

17. In the case on hand, the first appellate court, in paragraph 29 of its judgment, accepted the endorsement (Exb. A-2) made on the back of a registered document (Exb. A-1) after considering the oral evidence led by the plaintiff-appellant and the circumstance that signature(s)/thumbmark of D-1 and D-2 were not disputed, though claimed as one obtained on a blank paper. The reasoning of the first appellate court in paragraph 29 of its judgment was not addressed by the High Court. In fact, the High Court, in one line, on a flimsy defense of use of a signed blank paper, observed that genuineness of Exb. A-2 is not proved. In our view, the High Court fell in error here. While exercising powers under Section 100 CPC, it ought not to have interfered with the finding of fact returned by the first appellate court on this aspect; more so, when the first appellate court had drawn its conclusion after appreciating the

evidence available on record as also the circumstance that signature(s)/thumbmark(s) appearing on the document (Exb.A-2) were not disputed. Otherwise also, while disturbing the finding of the first appellate court, the High Court did not hold that the finding returned by the first appellate court is based on a misreading of evidence, or is in ignorance of relevant evidence, or is perverse. Thus, there existed no occasion for the High Court, exercising power under Section 100 CPC, to interfere with the finding of the first appellate court regarding payment of additional Rs. 1,95,000 to D-1 and D-2 over and above the sale consideration fixed for the transaction.

18. Once the finding regarding payment of additional sum of Rs.1,95,000 to D-1 and D-2 recorded by the first appellate court is sustained, there appears no logical reason to hold that the plaintiff (Annamalai) was not ready and willing to perform its part under the contract particularly when Rs. 4,70,000, out of total consideration of Rs. 4,80,000, was already paid and, over and above that, additional sum of Rs.1,95,000 was paid in lieu of demand made by D-1 & D-2. This we say so, because an opinion regarding plaintiff's readiness and willingness to perform its part under the contract is to be formed on the entirety of proven facts and circumstances of a case including conduct of the parties. The test is that the person claiming performance must satisfy conscience of the court that he has treated the contract subsisting with preparedness to fulfil his obligation and accept performance when the time for performance arrives."

31 No other point was urged by the learned counsel for the defendants/appellants.

32 The learned first Appellate Court have rightly appreciated the point in controversy vide the impugned

judgment, whereby it decreed the suit of the plaintiff/respondent for vacant possession of the suit land, after considering the oral as well as documentary evidence placed on record. No question of law much less substantial question of law arises in the instant appeal.

33 In view of aforesaid discussions and for the reasons stated here-in-above, the present appeal being devoid of any merit deserves to be dismissed. Ordered accordingly. Pending application(s), if any, also stands disposed of.

17th April, 2026 **(Romesh Verma)**
(pankaj) **Judge**