IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.257 of 2018

Reserved on: 18.09.2026
Date of Decision: 25.09.2026
Uploaded on: 25.09.2026

Chuni Lal (deceased) through his LR
and Another .....Appellants

Versus

Subhash Chand (deceased) through his LRs
and Another ....Respondents

Coram:

Hon'ble Mr. Justice Yogesh Jaswal, Judge.

Whether approved for reporting? [1] *Yes.*

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

For the respondents: Mr. Rajesh Mandhotra, Advocate.

Yogesh Jaswal, Judge:

The present Regular Second Appeal is directed against the judgment and decree dated 08.03.2018, passed by the learned Additional District Judge-I, Kangra at Dharamshala, Circuit Court at Nurpur, District Kangra, Himachal Pradesh (learned First Appellate Court), in Civil Appeal No.50-

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

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N/XIII/13/2012 (Regd. No.105/2014), whereby the judgment and decree dated 04.06.2012, passed by the learned Civil Judge (Junior Division), Court No.2, Nurpur, District Kangra, Himachal Pradesh (learned Trial Court), in Civil Suit No.138/2001, decreeing the suit of the plaintiffs for declaration and permanent prohibitory injunction, was affirmed. *(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 instituted a civil suit before the learned Trial Court against the defendants seeking a decree of declaration with a consequential relief of permanent prohibitory injunction. It was averred in the plaint that one Santo, son of Shri Arjun, was the absolute owner in possession of land comprised in Khata No.64, measuring 90 Kanals 6 Marlas, as per the Jamabandi for the year 1961–62. Vide registered sale deed dated 07.04.1967 (Ex.PW-1/A), said Santo sold 6315/27090 share, measuring 21 Kanals 1 Marla, out of the aforesaid joint land in favour of the plaintiffs for valid consideration and delivered physical possession thereof on the spot. The transaction of sale was given effect in the revenue

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record vide Mutation No.391, which was attested and sanctioned on 24.04.1967.

3. It was further pleaded that while preparing the Jamabandi for the subsequent year 1967–68, the revenue officials committed a clerical error by recording the plaintiffs' share merely as 6315 share instead of 6315/27090 share, which had the effect of reducing the recorded share of the plaintiffs by 12 Kanals 11 Marlas in the revenue papers. Notwithstanding this clerical omission, the plaintiffs continuously remained in joint possession to the extent of their purchased share of 21 Kanals 1 Marla.

4. During the subsequent settlement operations, separate Khasra numbers came to be carved out of old Khata No.64 and were reflected in separate possession of individual co-sharers under distinct Khataunis. Khasra No.229, measuring 0-57-41 HM, was recorded as *"Bagicha Barani Faldar"* in the exclusive cultivating possession of the plaintiffs, who had raised an orchard thereon.

5. Thereafter, during consolidation proceedings, the plaintiffs' share was carved out as Khasra No.140/1, measuring 0-32-71 HM, in lieu of a part of their earlier Khasra No.229. The

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remaining portion of Khasra No.229 was constituted into new Khasra No.141, measuring 0-24-70 HM, and was allotted to the defendants. However, actual physical possession of the said portion continuously remained with the plaintiffs on the spot.

6. In addition to Khasra No.141, the land comprised in Khasra Nos.144, 163, 184, 185, and 191 (total 6 plots), measuring 1-22-54 HM, of Khata No.30 min, Khatauni No.35 min, as per Jamabandi for the year 1994–95, situated in Tikka Bassa, Mauza Chhattar, Tehsil Nurpur, District Kangra, Himachal Pradesh (*hereinafter referred to as the '**suit land**'*), came to be allotted to the defendants. The plaintiffs asserted that they are joint owners in joint possession of the suit land to the extent of 4800/12254 share, measuring 0-48-00 HM. The revenue entries recording the defendants as exclusive owners of the entirety of the suit land were assailed as wrong, illegal, ultra vires, and contrary to the actual factual and legal position.

7. Taking undue advantage of these erroneous revenue entries, the defendants started asserting hostile title and openly threatened to dispossess the plaintiffs from their orchard (*Bagicha*). The plaintiffs acquired knowledge of the incorrect entries incorporated in the Jamabandi for the year 1966–67 and

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subsequent records on 10.03.2001. Upon the defendants' refusal to acknowledge the plaintiffs' title and possession, the plaintiffs instituted the suit.

8. The defendants contested the suit by filing a written statement wherein preliminary objections regarding lack of maintainability, absence of cause of action, lack of *locus standi*, plaintiffs being estopped by their act and conduct, non-joinder of necessary parties, and the suit being barred by limitation were raised. On merits, the averments made in the plaint were denied in *toto*. It was specifically denied that Santo had sold land measuring 21 Kanals 1 Marla to the plaintiffs. The defendants pleaded that their predecessor-in-interest, Santo, was an illiterate, rustic villager who was unversed in legal technicalities and incapable of understanding the legal consequences of executing documents. The sale deed was alleged to be a product of fraud, misrepresentation, and undue influence. It was maintained that the revenue entries in favour of the defendants were correct, that the land recorded in the plaintiffs' name was alone in their possession, and that the plaintiffs were never in possession of any portion of the suit land.

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9. The plaintiffs filed a replication controverting the objections taken in the written statement and reiterating the assertions made in the plaint.

10. On 22.01.2007, the learned Trial Court framed the following issues:

> *"1. Whether the plaintiffs are entitled for declaration, as prayed for? OPPs*
> *2. Whether the plaintiffs are entitled for consequential relief of permanent injunction, as prayed for? OPPs*
> *3. Whether suit of the plaintiffs' is not maintainable in the present form? OPD No.2.*
> *4. Whether the plaintiffs have no cause of action to file present suit? OPD No.2.*
> *5. Whether the plaintiffs have no locus standi to file present suit? OPD No.2.*
> *6. Whether the plaintiffs are estopped by their acts and conducts from filing present suit? OPD No.2.*
> *7. Whether the suit is time barred? OPD No.2.*
> *8. Whether sale deed dated 7.4.1967 in favour of predecessor-in-interest of plaintiffs is wrong, null and void being result of fraud, misrepresentation and undue influence, as alleged? OPD No.2.*
> *9. Relief."*

11. The parties were called upon to adduce evidence. The plaintiffs examined plaintiff No.1, Subhash Chand, as PW-1,

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who tendered his affidavit Ex.PW-1/A in examination-in-chief. The plaintiffs further examined Rajesh Kumar, Deed Writer, as PW-2, who identified the handwriting and signatures of the deceased scribe of the sale deed, Chander Prakash Sharma. Punnu Ram was examined as PW-3, and Raju Ram, an attesting witness to the registered sale deed dated 07.04.1967, was examined as PW-4. The plaintiffs also tendered in documentary evidence the original registered sale deed (Ex.PW-1/A) and copies of Jamabandies and Missal Haqiats spanning across 1961–62 to 1994–95 (Ex.P-1 to Ex.P-11 and Mark P-B).

12. In rebuttal, despite being afforded repeated and sufficient opportunities by the learned Trial Court, the defendants failed to lead any oral or documentary evidence. Consequently, vide order dated 19.12.2009, the evidence of the defendants was closed by order of the Court.

13. The learned Trial Court held that the plaintiffs had duly proved the registered sale deed dated 07.04.1967 (Ex.PW-1/A) through the attesting witness (PW-4) and the witness identifying the handwriting of the deceased scribe (PW-2). It was held that Mutation No.391 was duly attested in terms of the sale deed, but the revenue officials, while preparing subsequent

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Jamabandies, committed an apparent error in calculation, reducing the recorded area from 21 Kanals 1 Marla to 8 Kanals 10 Marlas (0-32-71 HM). The learned Trial Court found that the plaintiffs remained in continuous cultivating possession of the land on the spot. The defendants had failed to lead any evidence to substantiate their bald allegations of fraud, misrepresentation, or undue influence. Consequently, the learned Trial Court answered Issues No.1 and 2 in the affirmative and the remaining issues in the negative, decreeing the suit and declaring the plaintiffs to be joint owners in joint possession of 4800/12254 share, measuring 0-48-00 HM, of the suit land, along with a decree of permanent prohibitory injunction.

14. Aggrieved by the judgment and decree of the learned Trial Court, the defendants preferred an appeal before the learned First Appellate Court. The learned First Appellate Court concurred in full with the findings recorded by the learned Trial Court, holding that the plaintiffs had purchased 21 Kanals 1 Marla of land and remained in continuous possession on the spot. It observed that the reduction of their recorded share was purely the result of a clerical mistake committed by revenue

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officials, which was mechanically carried forward, and that the defendants had completely failed to substantiate their plea of fraud or invalidity of the sale deed. The learned First Appellate Court accordingly dismissed the appeal vide judgment and decree dated 08.03.2018.

15. Dissatisfied with the concurrent judgments and decrees passed by the learned Courts below, the appellants/defendants preferred the present Regular Second Appeal, which was admitted by this Court on 06.05.2019 on the following substantial questions of law:

> *"1. Whether both the courts below acted without jurisdiction as there being bar as per provisions of the Consolidation Act, more specifically Section 57 of the Act for interference by the civil courts, thereby vitiating the impugned judgment and decree?*
>
> *2. Whether findings as returned by courts below with respect to sale deed Ext. PW-1/A in the absence of evidence on the part of defendants having been closed by orders of the court, in law, stand vitiated?*
>
> *3. Whether ex parte proceedings as taken against appellant/defendant No.1(a) dated 23.12.2006 and against appellants/defendants 2(a) to 2(g) dated 19.12.2009 being contrary to Code of Civil Procedure, thereby vitiating the impugned judgment and decree?"*

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16. I have heard Mr. Ajay Sharma, learned Senior Counsel, assisted by Mr. Tarun K. Brakta, Advocate, for the appellants/defendants, and Mr. Rajesh Mandhotra, learned counsel for the respondents/plaintiffs, and have meticulously perused the records of both the learned Courts below.

17. Mr. Ajay Sharma, learned Senior Counsel for the appellants/defendants, submitted that both the learned Courts below acted completely without jurisdiction. He argued that under Section 57 of the Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971, the jurisdiction of Civil Courts is expressly barred in respect of matters arising out of consolidation proceedings. He contended that during consolidation, separate Khatas and Khataunis were prepared and lands were re-partitioned and re-allotted strictly in accordance with the provisions of the Consolidation Act, taking into account the quality and comparative value of the lands. Since the plaintiffs were allotted land of superior quality and higher valuation, a proportionately lesser area was allotted to them. Therefore, any grievance against the quantum of land allotted during consolidation could only be agitated before the

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statutory authorities created under the Consolidation Act, and the civil suit was clearly barred.

18. Learned Senior Counsel further contended that appellant/defendant No.1(a), Ramesh Kumar, was residing at Line Jeevangarh, Vikas Nagar, Dehradun (Uttarakhand), and was never served with process in the suit. The learned Trial Court committed an illegality in drawing a statutory presumption of service and proceeding against him *ex parte* on 23.12.2006. It was also argued that an application for adjournment was moved before the learned Trial Court on 19.12.2009 on the ground that Khiali Ram was seriously ill and bedridden, but the learned Trial Court arbitrarily closed the evidence of the defendants, thereby depriving them of a fair trial. He urged that the findings recorded on the registered sale deed (Ex.PW-1/A) in the absence of evidence on the part of the defendants stand vitiated in law.

19. Per contra, Mr. Rajesh Mandhotra, learned counsel for the respondents/plaintiffs, vehemently supported the impugned judgments and decrees. He argued that the present dispute does not arise out of any order or determination made by the consolidation authorities under the Consolidation Act.

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The grievance of the plaintiffs originated from an error committed by revenue officials under the Himachal Pradesh Land Revenue Act, 1954, while preparing the Jamabandi for the year 1967–68, where the share was erroneously recorded as 6315 instead of 6315/27090. He submitted that no order or scheme under the Consolidation Act was assailed, and therefore, the bar under Section 57 of the Act is not attracted.

20. Learned counsel further pointed out that the interlocutory order dated 19.12.2009 closing the evidence of the defendants was assailed by them by way of an appeal before the learned Appellate Court, but the said appeal was unconditionally withdrawn without seeking any liberty to re-agitate the issue, thereby rendering the order of closure final. He added that summons were issued to defendant No.1(a) by registered post at his correct permanent address, and non-receipt of the unserved envelope justified the presumption of valid service. Furthermore, defendants No.2(a) to 2(g) were never proceeded against *ex parte* on 19.12.2009; only their evidence was closed, and they were duly represented by counsel throughout the trial. He, therefore, prayed for the dismissal of the appeal.

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

Substantial Question of Law No.1:

22. The primary plank of the appellants' challenge is that the jurisdiction of the Civil Court to entertain and try the present suit was ousted by virtue of Section 57 of the Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 *(hereinafter referred to as the '**Consolidation Act**').* To appreciate this contention, it is apposite to reproduce Section 57 of the Consolidation Act, which reads as under:

> *" **57. Jurisdiction of civil court barred as regards matters arising under this Act**.*
> *- No person shall institute any suit or other proceedings in any civil court with respect to any matter arising out of the consolidation proceedings or with respect to any other matter in regard to which a suit or application can be filed under the provisions of this Act."*

23. A plain reading of the aforesaid statutory provision reveals that the jurisdiction of the Civil Court is barred only under two distinct contingencies:

> *(i) where the matter arises out of consolidation proceedings; or*

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(ii) where the matter is one in respect of which a suit or application can be filed under the provisions of the Consolidation Act.

24. In the present case, a perusal of the pleadings and the documentary record reveals that the dispute between the parties did not originate from any scheme of consolidation or an adjudication by the authorities under the Consolidation Act. The root of the controversy lies in an error committed by the revenue officials while preparing the periodical records (Jamabandi) under Chapter IV of the Himachal Pradesh Land Revenue Act, 1954. It is an admitted factual position that Santo, the predecessor-in-interest of the defendants, was the owner of 90 Kanals 6 Marlas of land comprised in Khata No.64 as per the Jamabandi for the year 1961–62. Vide registered sale deed dated 07.04.1967 (Ex.PW-1/A), Santo sold 6315/27090 share, measuring 21 Kanals 1 Marla, to the plaintiffs and delivered possession thereof. The transaction was given effect by the revenue officer through Mutation No.391 on 24.04.1967. However, while compiling the Jamabandi for the year 1967–68, the Patwari/revenue official committed an error by recording the

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fraction as 6315 share instead of 6315/27090 share, thereby erroneously showing a reduced area for the plaintiffs.

25. This clerical mistake, which originated under the Himachal Pradesh Land Revenue Act, 1954, was mechanically carried forward into subsequent Jamabandies, as well as during settlement operations and subsequent consolidation proceedings. The defendants did not place on record any order, scheme, or re-partition proceedings passed by any Consolidation Officer to show that the reduction of the plaintiffs' land was the outcome of an adjudication or valuation determination under the Consolidation Act.

26. An identical question came up for consideration before this Court in ***Mukhtiar Devi and Ors. v. Gauran and Ors., 2000 (3) Sim.L.C. 154***. In that case, this Court, while interpreting Section 57 and Section 15(2) of the Consolidation Act vis-à-vis Section 37 of the Himachal Pradesh Land Revenue Act, 1954, held as under:

> *"12. The first substantial question of law raised by the learned Counsel for the Defendants is as to the jurisdiction of the civil court. According to the learned Counsel for the Defendants, the jurisdiction of the civil court is barred under Section 57 of the H.P. Holdings (Consolidation and*

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Prevention of Fragmentation) Act, 1971 (for short the Consolidation Act). Section 57 of the Consolidation Act, provides:

> *No person shal institute any suit or other proceedings in any civil court with respect to any matter arising out of the consolidation proceeding or with respect to any other matter in regard to which a suit or application can be filed under the provisions of this Act.*

A bare perusal of the above provision shows that jurisdiction of the Civil Court is barred only when

> *(a) the matter arises out of consolidation proceedings; or*
>
> *(b) the matter is in regard to which a suit or application can be filed under the provisions of this Act.*

13. None of the above two situations exists in the present case. It is the admitted case of the Defendants that they have been ordered to be recorded as in possession of the land in dispute as tenants by the Director, Consolidation. It has, therefore, been contended that the matter has arisen out of consolidation proceedings.

Section 15(2) of the Consolidation Act reads: and Assistant Co lector under the said Acts and rules, shal, so long as an estate group of estates or a sub-division of an estate remains under consolidation operations, be exercised by the following officers:

1. *The Director of Consolidation of Holdings;*
2. *Settlement Officer (Consolidation);*
3. *Consolidation Officer;*

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4. Assistant Consolidation Officer.

14. The order by the Director, Consolidation therefore, was passed in his capacity of and exercising the powers of Collector under the H.P. Land Revenue Act, 1954, under the relevant provisions of the said Act and not under the provisions of the Consolidation Act.

15. Chapter IV of the H.P. Land Revenue Act, 1954, deals with "records of rights and periodical records". Section 37 falling under the said Chapter deals with determination of disputes as to an entry to be made in such record. It provides:

> *Determination of disputes.-(1) If during the making, revision or preparation of any record or in the course of any enquiry under this Chapter a dispute arises as to any matter of which an entry is to be made in a record or in a register of mutations, a Revenue Officer may of his own motion or on the application of any party interested, but subject to the provisions of the next following section, and after such inquiry as he thinks fit, determine the entry to be made as to that matter.*
>
> *(2) ....*
>
> *(3) A direction of a Revenue Officer under Sub-section (2) shall be subject to any decree or order which may be subsequently passed by any Court of competent jurisdiction.*

16. Under the above provisions, any order passed by a Revenue Officer, has been made subject to any decree or order which may be subsequently passed by any court of competent jurisdiction.

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> *17. Since the order of the Director, Consolidation was the one passed under Section 37 of the H.P. Land Revenue Act, 1954, the same is subject to the decision of a civil court. Therefore, it cannot be said that civil court has no jurisdiction. This question is as such answered against the Defendants."*

27. The principle of law enunciated in Mukhtiar Devi (supra) applies to the case at hand. The error regarding the plaintiffs' share in the revenue records was not an outcome of any order passed under the Consolidation Act, but was an uncorrected clerical discrepancy arising out of the preparation of periodical records under the Himachal Pradesh Land Revenue Act, 1954. Under Section 37(3) and Section 45 of the Himachal Pradesh Land Revenue Act, 1954, any entry made in a record-of-rights or annual record is subject to the decree or order of a Civil Court of competent jurisdiction. No provision of the Consolidation Act barred the plaintiffs from approaching the Civil Court to establish their title under a registered sale deed and seek correction of revenue entries that erroneously reflected their area.

28. The argument that the plaintiffs were allotted a lesser area on account of being given land of superior quality

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remains a bare assertion in the written statement, unsupported by any consolidation scheme or record. Therefore, the jurisdiction of the Civil Court was not barred under Section 57 of the Consolidation Act, and both the learned Courts below had jurisdiction to try and decide the suit. Substantial Question of Law No.1 is answered accordingly.

Substantial Question of Law No.2:

29. The second substantial question of law assails the findings returned by the learned Courts below qua the registered sale deed (Ex.PW-1/A) in the absence of evidence on the part of the defendants, which was closed by order of the Court on 19.12.2009.

30. In this regard, the record demonstrates that the learned Trial Court afforded numerous opportunities to the defendants to lead their evidence. On 19.12.2009, when the matter was fixed for the defendants' evidence as a last opportunity, an application was moved on behalf of the defendants seeking an adjournment on the plea that Khiali Ram (original defendant No.2) was ill and bedridden. The learned Trial Court, noticing the history of repeated adjournments,

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declined the prayer and closed the defendants' evidence by order of the Court.

31. If the witness or defendant Khiali Ram was genuinely incapacitated by illness and confined to bed, the appropriate course for the defendants was to move an application under Order XXVI of the Code of Civil Procedure for his examination on commission. No such steps were taken, and the defendants merely sought repeated adjournments to protract the litigation.

32. What clinches the issue is that the interlocutory order dated 19.12.2009 closing the evidence was assailed by the defendants by preferring an appeal before the learned First Appellate Court. The record reveals that the defendants subsequently withdrew the said appeal unconditionally. Having abandoned that challenge and permitted the order dated 19.12.2009 to attain finality, it is no longer open to the appellants to resurrect the issue in Regular Second Appeal. The closure of evidence by the learned Trial Court in the exercise of its judicial discretion cannot be termed arbitrary or perverse.

33. On merits, the execution and validity of the registered sale deed dated 07.04.1967 (Ex.PW-1/A) was duly proved by the plaintiffs in accordance with law. The plaintiffs

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examined Raju Ram (PW-4), who was an attesting witness to the sale deed. PW-4 categorically deposed that the sale deed was scribed by Chander Prakash Sharma, Petition Writer, at the instance of Santo, who affixed his thumb impression thereon after understanding its contents, whereafter he and the other attesting witness, Shankar Dass, appended their signatures. Since the scribe, Chander Prakash Sharma, had died, the plaintiffs examined Rajesh Kumar, Deed Writer (PW-2), who had worked with him and identified the handwriting and signatures of the deceased scribe on Ex.PW-1/A.

34. The defendants in their written statement had taken a plea that the sale deed was a result of fraud, misrepresentation, and undue influence. However, the defendants failed to set out the specific material particulars of the alleged fraud, misrepresentation, or undue influence as mandated by Order VI Rule 4 of the Code of Civil Procedure. The defendants led no evidence to substantiate these assertions. A registered document carries with it a presumption of valid execution, and the burden lay heavily upon the defendants to displace that presumption by cogent evidence, which they failed to do.

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35. Furthermore, both the learned Courts below have concurrently held that the plaintiffs were put in physical possession of the land measuring 21 Kanals 1 Marla pursuant to the sale deed dated 07.04.1967 and Mutation No.391, and that their physical possession over the suit land continued uninterruptedly on the spot, where they had raised an orchard (*Bagicha*). It is a well-settled proposition of law that a finding of possession recorded concurrently by the Courts below is a pure finding of fact, which cannot be disturbed by the High Court in second appeal under Section 100 of the Code of Civil Procedure. In ***Shyam Sunder Dutta v. Baikuntha Nath Banerjee, (1994) 6 SCC 545***, the Hon'ble Supreme Court held:

> *"5. The question of the respondents to have remained in possession cannot be gone into by the High Court, since the District Court, on consideration of the entire evidence, had categorically recorded a finding of fact that the appellant and his co-sharers remained in possession from August 1945 and that the respondents were not continuing in possession from that time. This being a finding of fact, the High Court would not have gone into the question. However, it would appear that on the question of limitation under the Bengal Tenancy Act, when the arguments were addressed, in consideration of that question, the High Court has gone into the question whether the respondents were not dispossessed from suit*

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lands and recorded a finding that they remained in possession. That finding does not appear to be warranted in view of the fact that the evidence was not discussed and as rightly contended the only evidence the High Court had considered was that of PW 1 but the first appellate court had considered the evidence of PWs 2 to 5 and the documentary evidence and that evidence was found to be in support of the evidence given by PW 1 that the respondents did not continue in possession from August 1945. Therefore, the finding recorded by the High Court, in fact, was not necessary. Even otherwise, that finding was recorded without adverting to all the material evidence and that, therefore, the finding of possession recorded by the High Court is clearly illegal."

36. Applying this legal principle, the concurrent finding of fact arrived at by both the learned Courts below regarding the lawful execution of the registered sale deed (Ex.PW-1/A) and the continuous physical possession of the plaintiffs over the suit land is based on evidence on record. The absence of evidence on the part of the defendants was a consequence of their own default, and the findings of the learned Courts below are not vitiated in law. Substantial Question of Law No.2 is answered accordingly.

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Substantial Question of Law No.3:

37. The third substantial question of law concerns the validity of the *ex parte* proceedings taken against appellant/defendant No.1(a), Ramesh Kumar, vide order dated 23.12.2006, and against appellants/defendants No.2(a) to 2(g) purportedly dated 19.12.2009.

38. Dealing first with appellant/defendant No.1(a), Ramesh Kumar, the record reveals that upon the death of original defendant No.1, Chuni Lal, an application for bringing on record his legal representative was allowed, and summons were directed to be issued to Ramesh Kumar. Summons were dispatched to his permanent residential address by registered post. The postal cover containing the summons was not received back unserved within the statutory period. In terms of Section 27 of the General Clauses Act, 1897, and Order V Rule 19-A (as applicable) of the Code of Civil Procedure, the learned Trial Court was justified in drawing the statutory presumption of valid service and proceeding against him ex parte vide order dated 23.12.2006.

39. It is pertinent to note that Ramesh Kumar never filed any application under Order IX Rule 13 of the Code of Civil

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Procedure before the learned Trial Court to set aside the *ex parte* order, nor did he dispute the correctness of the permanent residential address to which the process was dispatched. In fact, in the first appeal preferred before the learned First Appellate Court, Ramesh Kumar joined as appellant No.1(a). Having submitted to the appellate jurisdiction without demonstrating any prejudice or denial of notice at his permanent address, it does not lie in the mouth of appellant No.1(a) to assail the ex parte order in Regular Second Appeal.

40. As regards appellants/defendants No.2(a) to 2(g), the formulation of Substantial Question of Law No.3 proceeds on a factual misconception. A perusal of the *zimni* orders and the record of the learned Trial Court reveals that on 19.12.2009, defendants No.2(a) to 2(g) were never proceeded against *ex parte*. On the said date, the learned Trial Court only closed the evidence of the defendants on account of repeated defaults. Defendants No.2(a) to 2(g) were duly represented by their learned counsel throughout the trial, who cross-examined the plaintiffs' witnesses and advanced final arguments before the learned Trial Court. Therefore, the assertion that defendants

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No.2(a) to 2(g) were proceeded against *ex parte* on 19.12.2009 is factually incorrect and unsupported by the record.

41. It is also noted that an application under Order VI Rule 17 of the Code of Civil Procedure for amendment of pleadings remained pending on the record of the learned Trial Court without being formally decided. However, the said application was never pressed by the appellants/defendants either before the learned Trial Court or during the hearing of the appeal before the learned First Appellate Court. An application that was abandoned and never pressed by a party cannot be raised in second appeal to undermine concurrent findings on merits. Consequently, the proceedings before the learned Trial Court were in accordance with the provisions of the Code of Civil Procedure, and the impugned judgments and decrees are not vitiated. Substantial Question of Law No.3 is answered accordingly.

Final Order:

42. In view of the findings returned on Substantial Questions of Law No.1, 2, and 3, the present Regular Second Appeal fails and is accordingly dismissed. The judgment and decree dated 08.03.2018, passed by the learned Additional

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District Judge-I, Kangra at Dharamshala, Circuit Court at Nurpur, in Civil Appeal No.50-N/XIII/13/2012 (Regd. No.105/2014), affirming the judgment and decree dated 04.06.2012, passed by the learned Civil Judge (Junior Division), Court No.2, Nurpur, in Civil Suit No.138/2001, is affirmed.

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

Records of the learned Courts below be sent back forthwith.

(Yogesh Jaswal),
Judge

September 25, 2026
(Rajeev Raturi)

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