IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 9th OF JULY, 2025

SECOND APPEAL No. 113 of 2013

SMT. VILOT
Versus
DALCHANDRA AND OTHERS

Appearance:

Shri Madhur Bhargava - Advocate for the appellant.

Shri S.S.Kushwah- Government Advocate for the State.

JUDGMENT

This second appeal under Section 100 of C.P.C. has been filed against the judgment and decree dated 24/11/2012 passed by Additional District Judge, Pichhore, District Shivpuri in Civil Appeal No.6-A/2012 as well as judgment and decree dated 16/12/2011 passed by Civil Judge, Class-II, Pichhore, District Shivpuri in RCS No.24-A/2011.

2. Appellant is the plaintiff who has lost her case from both the Courts below.

3. It is the case of appellant that in the year 1991 she had encroached upon the land belonging to the true owner and since, then she is in open and hostile possession and thus, she has acquired her title by way of adverse possession.

4. The plaint averments were denied by the defendants/true owner.

5. The Trial Court after framing the issues and recording evidence

dismissed the suit.

6. Being aggrieved by the judgment and decree passed by the Trial Court, appellant filed an appeal which too has been dismissed by Appellate Court by impugned judgment and decree.

7. Challenging the judgment and decree passed by the Courts below, it is submitted by counsel for appellant that both the Courts below have failed to consider the ocular evidence led by appellant in proper prospective. It is submitted that appellant has successfully pleaded and proved that she is in open and hostile possession of the land in dispute since 1991 and proposed following substantial question of law:-

> "i) Whether on the facts and material brought on record by the plaintiff, the suit of the plaintiff filed for declaration of title and permanent injunction ought to have been decreed as the defendant no. 1 has failed to prove his possession or dispossession of the plaintiff from the suit land and the learned court below has not recorded any finding that the plaintiff is not in possession of the suit land ?
> ii) Whether the plaintiff being in continuous possession of the suit land w.e.f. 28.6.91 openly, with hostility and against the interest/rights of the defendant no. 1, has acquired title by adverse possession ?
> Whether the learned courts below have erred in not granting decree of permanent injunction inspite of the fact that the plaintiff is in actual physical possession of the suit land ?
> iv) Whether learned courts below have erred in not considering the case of permanent injunction pleaded and proved and have further erred in dismissing the suit without framing any issue with respect to settled possession and entitlement of the plaintiff for decree of permanent injunction ?
> v) Whether learned courts below have erred in dismissing the application filed under order 26 rule 9 CPC to resolve the dispute of situation of house over the land survey no. 292/2 area 0.418 hectare?
> vi) Whether the judgement and decree passed by the learned Courts below being based on non consideration of evidence and pleadings and being based on wrong assumptions, are perverse and contrary to law and record and therefore are not sustainable ?"

8. Heard the learned counsel for appellant.

9. Both the Courts below have given concurrent finding of fact to the effect that the plaintiff is not in possession of the property in dispute. Finding of possession is undisputedly a dispute question of fact which cannot be interfered with in exercise of power under Section 100 of C.P.C. unless and until those findings are shown to be perverse. Except ocular evidence, no other evidence was produced by appellant to show that she was in cultivating possession of land in dispute. If the plaintiff was in possession, then she must be selling the crop in Krishi Upaj Mandi, but no receipt of sale of agricultural produce was filed and proved by plaintiff.

10. It is well established principle of law that this Court in exercise of power under Section 100 of C.P.C. cannot be interfered with the concurrent finding of fact even if they found to be erroneous. Unless and until findings of fact recorded by the Courts below are found to be perverse, then the same cannot be interfered with.

11. Thus, counsel for appellants could not point out any perversity in the concurrent findings of facts recorded by the Courts below. The Supreme Court in the case of **Damodar Lal v. Sohan Devi,** reported in **(2016) 3 SCC 78** has held as under :

> "**8.** "Perversity" has been the subject-matter of umpteen number of decisions of this Court. It has also been settled by several decisions of this Court that the first appellate court, under Section 96 of the Civil Procedure Code, 1908, is the last court of facts unless the findings are based on evidence or are perverse.
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> **9.** In *Krishnan* v. *Backiam*, it has been held at para 11 that: (SCC pp. 192-93)
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> "*11*. It may be mentioned that the first appellate court under Section 96 CPC is the last court of facts. The High Court in second appeal under Section 100 CPC cannot interfere with the findings of fact recorded by the first appellate court under Section 96 CPC. No doubt the findings of fact of the

> first appellate court can be challenged in second appeal on the ground that the said findings are based on no evidence or are perverse, but even in that case a question of law has to be formulated and framed by the High Court to that effect."
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> **10.** In *Gurvachan Kaur* v. *Salikram*, at para 10, this principle has been reiterated: (SCC p. 532)
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> "*10*. It is settled law that in exercise of power under Section 100 of the Code of Civil Procedure, the High Court cannot interfere with the finding of fact recorded by the first appellate court which is the final court of fact, unless the same is found to be perverse. This being the position, it must be held that the High Court4 was not justified in reversing the finding of fact recorded by the first appellate court on the issues of existence of landlord-tenant relationship between the plaintiff and the defendant and default committed by the latter in payment of rent."

12. The Supreme Court in the case of **Pakeerappa Rai v. Seethamma Hengsu,** reported in **(2001) 9 SCC 521** has held as under :

> "2…. But the High Court in exercise of power under Section 100 CPC cannot interfere with the erroneous finding of fact howsoever gross the error seems to be. We, therefore, do not find any merit in the contention of the learned counsel for the appellant."

13. The Supreme Court in the case of **Randhir Kaur v. Prithvi Pal Singh,** reported in **(2019) 17 SCC 71** has held as under :

> "**15.** A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact.
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> **16.** In view of the above, we find that the High Court could not interfere with the findings of fact recorded after appreciation of evidence merely because the High Court thought that another view would be a better view. The learned first appellate court has considered the absence of clause in the first power of attorney to purchase land on

behalf of the plaintiff; the fact that the plaintiff has not appeared as witness.

17. A perusal of the findings recorded show that the learned first appellate court has returned a finding that the plaintiff was ready and willing to perform the contract and that the defendants cannot take plea that they were not aware that Dhanwant Singh was power-of-attorney holder. Therefore, the findings recorded by the first appellate court cannot be said to be contrary to law which may confer jurisdiction on the High Court to interfere with the findings of fact recorded by the first appellate court.

18. The learned counsel for the respondents have not raised any argument that the first appellate court has failed to determine some material issue of law which may confer jurisdiction on the High Court to interfere with the findings of fact nor is there any substantial error or defect in the procedure provided by the Code of Civil Procedure or by any other law for the time being in force which may possibly have produced error or defect in the decision on merits. Therefore, the High Court was not within its jurisdiction to interfere with the findings of fact only for the reason that the plaintiff has failed to prove power of attorney in favour of Dhanwant Singh."

14. The Supreme Court in the case of **Gurdev Kaur v. Kaki,** reported in **(2007) 1 SCC 546** has held as under :

"**46.** In *Bholaram* v. *Ameerchand* a three-Judge Bench of this Court reiterated the statement of law. The High Court, however, seems to have justified its interference in second appeal mainly on the ground that the judgments of the courts below were perverse and were given in utter disregard of the important materials on the record particularly misconstruction of the rent note. Even if we accept the main reason given by the High Court the utmost that could be said was that the findings of fact by the courts below were wrong or grossly inexcusable but that by itself would not entitle the High Court to interfere in the absence of a clear error of law.

47. In *Kshitish Chandra Purkait* v. *Santosh Kumar Purkait* a three-Judge Bench of this Court held: (*a*) that the High Court should be satisfied that the case involved a substantial question of law and not mere question of law; (*b*) reasons for permitting the plea to be raised should also be recorded; (*c*)

it has the duty to formulate the substantial questions of law and to put the opposite party on notice and give fair and proper opportunity to meet the point. The Court also held that it is the duty cast upon the High Court to formulate substantial question of law involved in the case even at the initial stage.

48. This Court had occasion to determine the same issue in *Dnyanoba Bhaurao Shemade* v. *Maroti Bhaurao Marnor.* The Court stated that the High Court can exercise its jurisdiction under Section 100 CPC only on the basis of substantial questions of law which are to be framed at the time of admission of the second appeal and the second appeal has to be heard and decided only on the basis of such duly framed substantial questions of law.

49. A mere look at the said provision shows that the High Court can exercise its jurisdiction under Section 100 CPC only on the basis of substantial questions of law which are to be framed at the time of admission of the second appeal and the second appeal has to be heard and decided only on the basis of such duly framed substantial questions of law. The impugned judgment shows that no such procedure was followed by the learned Single Judge. It is held by a catena of judgments by this Court, some of them being, *Kshitish Chandra Purkait* v. *Santosh Kumar Purkait* and *Sheel Chand* v. *Prakash Chand* that the judgment rendered by the High Court under Section 100 CPC without following the aforesaid procedure cannot be sustained. On this short ground alone, this appeal is required to be allowed.

50. In *Kanai Lal Garari* v. *Murari Ganguly* this Court has observed that it is mandatory to formulate the substantial question of law while entertaining the appeal in absence of which the judgment is to be set aside. In *Panchugopal Barua* v. *Umesh Chandra Goswami* and *Santosh Hazari* v. *Purushottam Tiwari* the Court reiterated the statement of law that the High Court cannot proceed to hear a second appeal without formulating the substantial question of law. These judgments have been referred to in the later judgment of *K. Raj* v. *Muthamma*. A statement of law has been reiterated regarding the scope and interference of the Court in second appeal under Section 100 of the Code of Civil Procedure.

51. Again in *Santosh Hazari* v. *Purushottam Tiwari* another three-Judge Bench of this Court correctly delineated the

scope of Section 100 CPC. The Court observed that an obligation is cast on the appellant to precisely state in the memorandum of appeal the substantial question of law involved in the appeal and which the appellant proposes to urge before the Court. In the said judgment, it was further mentioned that the High Court must be satisfied that a substantial question of law is involved in the case and such question has then to be formulated by the High Court. According to the Court the word substantial, as qualifying "question of law", means—of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with—technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of "substantial question of law" by suffixing the words "of general importance" as has been done in many other provisions such as Section 109 of the Code and Article 133(1)(*a*) of the Constitution.

52. In *Kamti Devi* v. *Poshi Ram* the Court came to the conclusion that the finding thus reached by the first appellate court cannot be interfered with in a second appeal as no substantial question of law would have flowed out of such a finding.

53. In *Thiagarajan* v. *Sri Venugopalaswamy B. Koil* this Court has held that the High Court in its jurisdiction under Section 100 CPC was not justified in interfering with the findings of fact. The Court observed that to say the least the approach of the High Court was not proper. It is the obligation of the courts of law to further the clear intendment of the legislature and not frustrate it by excluding the same. This Court in a catena of decisions held that where findings of fact by the lower appellate court are based on evidence, the High Court in second appeal cannot substitute its own findings on reappreciation of evidence merely on the ground that another view was possible.

54. In the same case, this Court observed that in a case where special leave petition was filed against a judgment of the High Court interfering with findings of fact of the lower appellate court. This Court observed that to say the least the approach of the High Court was not proper. It is the obligation of the courts of law to further the clear intendment of the legislature and not frustrate it by

excluding the same. This Court further observed that the High Court in second appeal cannot substitute its own findings on reappreciation of evidence merely on the ground that another view was possible.

55. This Court again reminded the High Court in *Commr., HRCE* v. *P. Shanmugama* that the High Court has no jurisdiction in second appeal to interfere with the finding of facts.

56. Again, this Court in *State of Kerala* v. *Mohd. Kunhi* has reiterated the same principle that the High Court is not justified in interfering with the concurrent findings of fact. This Court observed that, in doing so, the High Court has gone beyond the scope of Section 100 of the Code of Civil Procedure.

57. Again, in *Madhavan Nair* v. *Bhaskar Pillai* this Court observed that the High Court was not justified in interfering with the concurrent findings of fact. This Court observed that it is well settled that even if the first appellate court commits an error in recording a finding of fact, that itself will not be a ground for the High Court to upset the same.

58. Again, in *Harjeet Singh* v. *Amrik Singh* this Court with anguish has mentioned that the High Court has no jurisdiction to interfere with the findings of fact arrived at by the first appellate court. In this case, the findings of the trial court and the lower appellate court regarding readiness and willingness to perform their part of contract was set aside by the High Court in its jurisdiction under Section 100 CPC. This Court, while setting aside the judgment of the High Court, observed that the High Court was not justified in interfering with the concurrent findings of fact arrived at by the courts below.

59. In *H.P. Pyarejan* v. *Dasappa* delivered on 6-2-2006, this Court found serious infirmity in the judgment of the High Court. This Court observed that it suffers from the vice of exercise of jurisdiction which did not vest in the High Court. Under Section 100 of the Code (as amended in 1976) the jurisdiction of the Court to interfere with the judgments of the courts below is confined to hearing of substantial questions of law. Interference with the finding of fact by the High Court is not warranted if it invokes reappreciation of evidence. This Court found that the impugned judgment of the High Court was vulnerable and needed to be set aside."

15. The Supreme Court in the case of **Municipal Committee, Hoshiarpur v. Punjab SEB,** reported in **(2010) 13 SCC 216** has held as under :

> "**16.** Thus, it is evident from the above that the right to appeal is a creation of statute and it cannot be created by acquiescence of the parties or by the order of the court. Jurisdiction cannot be conferred by mere acceptance, acquiescence, consent or by any other means as it can be conferred only by the legislature and conferring a court or authority with jurisdiction, is a legislative function. Thus, being a substantive statutory right, it has to be regulated in accordance with the law in force, ensuring full compliance with the conditions mentioned in the provision that creates it. Therefore, the court has no power to enlarge the scope of those grounds mentioned in the statutory provisions. A second appeal cannot be decided merely on equitable grounds as it lies only on a substantial question of law, which is something distinct from a substantial question of fact. The court cannot entertain a second appeal unless a substantial question of law is involved, as the second appeal does not lie on the ground of erroneous findings of fact based on an appreciation of the relevant evidence. The existence of a substantial question of law is a condition precedent for entertaining the second appeal; on failure to do so, the judgment cannot be maintained. The existence of a substantial question of law is a sine qua non for the exercise of jurisdiction under the provisions of Section 100 CPC. It is the obligation on the court to further clear the intent of the legislature and not to frustrate it by ignoring the same. (Vide *Santosh Hazari* v. *Purshottam Tiwari*; *Sarjas Rai* v. *Bakshi Inderjit Singh*; *Manicka Poosali* v. *Anjalai Ammal*; *Sugani* v. *Rameshwar Das*; *Hero Vinoth* v. *Seshammal*; *P. Chandrasekharan* v. *S. Kanakarajan*; *Kashmir Singh* v. *Harnam Singh*; *V. Ramaswamy* v. *Ramachandran* and *Bhag Singh* v. *Jaskirat Singh*.)
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> **17.** In *Mahindra & Mahindra Ltd.* v. *Union of India* this Court observed*:
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> "*12*. … it is not every question of law that could be permitted to be raised in the second appeal. The parameters within which a new legal plea could be permitted to be raised, are specifically stated in sub-section (5) of Section 100 CPC. Under the proviso, the Court should be 'satisfied'

that the case involves a 'substantial question of law' and not a mere 'question of law'. The reason for permitting the substantial question of law to be raised, should be 'recorded' by the Court. It is implicit therefrom that on compliance of the above, the opposite party should be afforded a fair or proper opportunity to meet the same. It is not any legal plea that would be alleged at the stage of second appeal. It should be a substantial question of law. The reasons for permitting the plea to be raised should also be recorded." [*Kshitish Chandra Purkait* v. *Santosh Kumar Purkait*, (1997) 5 SCC 438, pp. 445-46, para 10]

18. In *Madamanchi Ramappa* v. *Muthaluru Bojjappa* this Court observed : (AIR pp. 1637-38, para 12)

"*12*. … Therefore, whenever this Court is satisfied that in dealing with a second appeal, the High Court has, either unwittingly and in a casual manner, or deliberately as in this case, contravened the limits prescribed by Section 100, it becomes the duty of this Court to intervene and give effect to the said provisions. It may be that in some cases, the High Court dealing with the second appeal is inclined to take the view that what it regards to be justice or equity of the case has not been served by the findings of fact recorded by courts of fact; but on such occasions it is necessary to remember that what is administered in courts is justice according to law and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law. If in reaching its decisions in second appeals, the High Court contravenes the express provisions of Section 100, it would inevitably introduce in such decisions an element of disconcerting unpredictability which is usually associated with gambling; and that is a reproach which judicial process must constantly and scrupulously endeavour to avoid."

19. In *Jai Singh* v. *Shakuntala* this Court held as under : (SCC pp. 637-38, para 6)

"*6*. … it is only in very exceptional cases and on extreme perversity that the authority to examine the same in extenso stands permissible — it is a rarity rather than a regularity and thus in fine it can be safely concluded that while there is no prohibition as such, but the power to scrutiny can only be had in very exceptional circumstances and upon proper circumspection."

20. While dealing with the issue, this Court in *Leela Soni* v. *Rajesh Goyal* observed as under : (SCC p. 502, paras 20-22)

"*20*. There can be no doubt that the jurisdiction of the High Court under Section 100 of the Code of Civil Procedure (CPC) is confined to the framing of substantial questions of law involved in the second appeal and to decide the same. Section 101 CPC provides that no second appeal shall lie except on the grounds mentioned in Section 100 CPC. Thus it is clear that no second appeal can be entertained by the High Court on questions of fact, much less can it interfere in the findings of fact recorded by the lower appellate court. This is so, not only when it is possible for the High Court to take a different view of the matter but also when the High Court finds that conclusions on questions of fact recorded by the first appellate court are erroneous.

21. It will be apt to refer to Section 103 CPC which enables the High Court to determine the issues of fact:

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22. The section, noted above, authorises the High Court to determine any issue which is necessary for the disposal of the second appeal provided the evidence on record is sufficient, in any of the following two situations : (*1*) when that issue has not been determined both by the trial court as well as the lower appellate court or by the lower appellate court; or (*2*) when both the trial court as well as the appellate court or the lower appellate court have wrongly determined any issue on a substantial question of law which can properly be the subject-matter of second appeal under Section 100 CPC."

21. In *Jadu Gopal Chakravarty* v. *Pannalal Bhowmick* the question arose as to whether the compromise decree had been obtained by fraud. This Court held that though it is a question of fact, but because none of the courts below had pointedly addressed the question of whether the compromise in the case was obtained by perpetrating fraud on the court, the High Court was justified in exercising its powers under Section 103 CPC to go into the question. (See also *Achintya Kumar Saha* v. *Nanee Printers*.)

22. In *Bhagwan Sharma* v. *Bani Ghosh* this Court held that in case the High Court exercises its jurisdiction under Section 103 CPC, in view of the fact that the findings of fact recorded by the courts below stood vitiated on account of

non-consideration of additional evidence of a vital nature, the Court may itself finally decide the case in accordance with Section 103(*b*) CPC and the Court must hear the parties fully with reference to the entire evidence on record with relevance to the question after giving notice to all the parties. The Court further held as under : (*Bhagwan Sharma case*, SCC p. 499, para 5)

"*5*. … The grounds which may be available in support of a plea that the finding of fact by the court below is vitiated in law, does not by itself lead to the further conclusion that a contrary finding has to be finally arrived at on the disputed issue. On a reappraisal of the entire evidence the ultimate conclusion may go in favour of either party and it cannot be prejudged, as has been done in the impugned judgment."

23. In *Kulwant Kaur* v. *Gurdial Singh Mann* this Court observed as under : (SCC pp. 278-79, para 34)

"*34*. Admittedly, Section 100 has introduced a definite restriction on to the exercise of jurisdiction in a second appeal so far as the High Court is concerned. Needless to record that the Code of Civil Procedure (Amendment) Act, 1976 introduced such an embargo for such definite objectives and since we are not required to further probe on that score, we are not detailing out, but the fact remains that while it is true that in a second appeal a finding of fact, even if erroneous, will generally not be disturbed but where it is found that the findings stand vitiated on wrong test and on the basis of assumptions and conjectures and resultantly there is an element of perversity involved therein, the High Court in our view will be within its jurisdiction to deal with the issue. This is, however, only in the event such a fact is brought to light by the High Court explicitly and the judgment should also be categorical as to the *issue of perversity vis-à-vis the concept of justice*. Needless to say however, that perversity itself is *a substantial question* worth adjudication — what is required is a categorical finding on the part of the High Court as to *perversity*. …

The requirements stand specified in Section 103 and nothing short of it will bring it within the ambit of Section 100 *since the issue of perversity will also come within the ambit of substantial question of law as noticed above*. The legality of finding of fact cannot but be termed to be a question of law. We reiterate however, *that there must be a definite finding to*

that effect in the judgment of the High Court so as to make it evident that Section 100 of the Code stands complied with."

16. As no substantial question of law arises in the present appeal, accordingly, judgment and decree dated 24/11/2012 passed by Additional District Judge, Pichhore, District Shivpuri in Civil Appeal No.6-A/2012 as well as judgment and decree dated 16/12/2011 passed by Civil Judge, Class-II, Pichhore, District Shivpuri in RCS No.24-A/2011 are hereby affirmed.

17. Accordingly, this second appeal fails and is hereby **dismissed**.

(G.S. Ahluwalia)
Judge

PjS/-