



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. : 226 of 2025
Reserved on 09.04.2026
Decided on : 20.04.2026

Bisham Lal GargAppellant.

Versus

Hardei & Ors. ...Respondents

Coram:

The Hon'ble Mr. Justice Romesh Verma. Judge.
Whether approved for reporting?¹

For the appellant Mr. Paresh Sharma, Advocate.

For the respondents Mr. Sanjeev Kuthiala, Sr. Advocate
with Ms. Sana Rana, Advocate, for
respondents No. 2(i) to 2(iv)
Respondent No.1 proceeded against
ex-parte vide order dated
07.08.2025

Romesh Verma, Judge

The present Regular Second Appeal arises out of the judgment and decree as passed by the learned District Judge, Bilaspur, District Bilaspur, H.P. dated 24.12.2024, whereby the appeal preferred by the present appellant/plaintiff has been ordered to be dismissed and the judgment and decree as passed by the learned Civil Judge, (Senior Division), Bilaspur, District Bilaspur, dated 06.12.2007 has been affirmed.

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

2. The brief facts of the case are that the present appellant has filed a suit for declaration and permanent prohibitory injunction and in alternative, decree for possession in the Court of learned Civil Judge (Sr. Division), Bilaspur, District Bilaspur . It was averred in the plaint that the plaintiff is the owner in possession of the suit land comprised in Khata/Khatoni No. 52/64, Khasra Nos. 76 and 77, measuring 0-3 bigha situated at Village Bamta, Pargana & Tehsil Sadar, Bilaspur, as per the copy of jamabandi for the year 1998-99.

3. It was averred that the plaintiff has purchased the suit land from previous owner vide sale deed dated 16.11.1993 and thereafter he is in exclusive ownership and possession of the same. It is further averred that since the date of execution of the sale deed, the plaintiff is in exclusive possession of the suit land and house situated thereon and the defendants have got no right, title and interest over the suit and the house. Further it was averred that defendant No.1 in collusion with the revenue staff misrepresented the facts and got mutation No. 287 entered in her name through Assistant Collector First Grade in Khasra No. 251/221/78/1 with respect to the land measuring

0-1 bigha on 28.07.1998 and that the land measuring 0-1 bigha was wrongly and illegally provided to her in the revenue record by deducting the land from the suit land to which neither the defendant No.1 was entitled under any law nor the Assistant Collector 1st Grade Sadar was empowered to do such illegal acts.

4. It was further averred that in the previous revenue records, suit land has been mentioned in revenue record in the name of previous owners and that the plaintiff has constructed a cemented retaining wall to cover the suit land and adjacent land of the plaintiff in the year 1995 and the plaintiff is enjoying the same peacefully, uninterruptedly and continuously. Further it was averred that defendant No.1 had executed the sale deed illegally and wrongly in favour of the defendant No.2 on 29.01.2001 pertaining to the land which she got illegally carved out in her own name in collusion with the revenue authorities over which the defendant No.1 was neither in possession nor the said land belongs to her in any manner.

5. As per the averments as made in the plaint it was stated that after the execution of the sale deed, the defendant No.2 threatened the plaintiff that he will

dispossess the plaintiff from the suit land as he has purchased 0-1 bigha of the land which is in possession of the plaintiff and falls in Khasra Nos. 76 and 77 and the purchased land has been entered in Khasra No. 251/221. Since the defendants No. 2 has threatened to dispossess the plaintiff from the suit land, therefore, decree for declaration was sought to the effect that the plaintiff is exclusive owner in possession of the suit land since the time of executing the sale deed pertaining to the land and structure standing thereon and the sale deed dated 29.01.2001 executed by defendant No.1 in the name of defendant No.2 as also changed revenue record is a nullity being wrong, illegal and without any right, title or interest.

6. In alternative, it was prayed that in case during the pendency of the suit, if defendants forcibly dispossessed the plaintiff from the suit land or raised any construction thereon, a decree for vacant possession after demolishing the structure be passed in favour of the plaintiff.

7. The suit was contested by the defendants by filing joint written statement and preliminary objections with regard to maintainability, cause of action, valuation etc. were raised. All the averments as made in the plaint

were refuted and it was pleaded that defendant No.2 is in peaceful and exclusive possession of the suit land measuring 0-1 bigha, which has been purchased by him through a valid and registered sale deed from defendant No.1.

8. It was denied that defendant No.2 is threatening the plaintiff to dispossess him from the suit land since the plaintiff is not in the physical possession of the same . It was stated that the suit land measuring 0-1 bigha was in the ownership and possession of defendant No.1 prior to the purchase of the same by defendant No.2. It has been averred that defendant No.2 has got every right, title and interest in the suit land to use the same in the manner as he likes. Consequently, it was prayed that suit filed by the plaintiff may be ordered to be dismissed.

9. The plaintiff filed replication to the written statement filed by the defendants and the averments as made in the plaint were reiterated.

10. The learned trial Court framed the issues on 19.12.2001 and 08.07.2002 in the following manner:

1. Whether the plaintiff is owner in possession of the suit land and the structure situated therein in accordance with the registered sale deed dated 16.11.1993, as alleged?...OPP.

2. Whether the order of mutation No.287, dated 28.07.1998 passed by A.C. Ist Grade is null and void and illegal as alleged? ...OPP.

3. Whether the sale deed executed by the defendant No.1 in favour of defendant No.2 on 29.01.2001 is illegal, null and void, as alleged? If so, its effect?...OPP.

4. Whether the plaintiff is entitled to the relief of injunction as prayed for against the defendants?...OPP.

5. Whether the plaintiff is entitled to the relief of possession of the suit land in alternative in case of his dispossession from the suit land during the pendency of the suit, as alleged?...OPP.

6. Whether the suit is not maintainable in the present form?...OPD.

7. Whether the plaintiff has no locus standi and cause of action to file the suit?...OPD.

8. Whether the suit has not been properly valued for the purpose of Court fee and jurisdiction?...OPD.

9. Whether the defendant No.2 is owner in possession of 0-1 bigha out of the suit land being its purchaser from the defendant No.1, as alleged?OPD.

9-A.Whether in the previous revenue record karilans of the suit land Khasra Nos. 76,77 were shown as 5 and 5 which after the mutation have been reduced to 4 and 4 by A.C. Ist Grade arbitrarily and illegally and land measuring 1 biswa was wrongly and illegally created and was wrongly deducted from the suit land, as alleged?...OPP.

9-B.Whether the plaintiff has constructed a cemented retaining wall to cover the suit land and adjacent to the land in the year 1995 and that he is enjoying the same peacefully,

uninterruptedly without any interference from any body, as alleged?...OPP.

10. Relief?

11. The learned trial Court directed both the parties to adduce evidence in support of their contentions and vide impugned judgment and decree dated 06.12.2007, the suit filed by the present plaintiff was ordered to be dismissed.

12. Feeling dissatisfied, the present appellant preferred an appeal in the Court of learned District Judge, Bilaspur, District Bilaspur on 01.01.2008. Vide judgment and decree dated 24.12.2024, learned District Judge, Bilaspur dismissed the appeal as preferred by the plaintiff/appellant affirming the findings of the learned trial Court.

13. Still feeling aggrieved, the plaintiff/appellant has filed the present Regular Second Appeal.

14. It is contended by Mr. Paresh Sharma, learned counsel for the appellant, that the judgments and decrees as passed by the Courts below are erroneous and liable to be quashed and set-aside. He has submitted that the Courts below have not appreciated the point in controversy and have rendered the findings which are unsustainable and perverse.

15. On the other hand, Mr. Sanjeev Kuthiala, learned Senior Advocate, assisted by Ms. Sana Rana, Advocate appearing for respondents No. 2(i) to 2(iv), has defended the judgments and decrees as passed by the Courts below by stating that both the Courts below have rightly appreciated the point in controversy and after taking into consideration, each and every material aspect of the matter, the judgments have been passed by the Courts below. Further it is contended that there are concurrent findings of fact by the Courts below which do not call for any interference, therefore, the present appeal deserves to be dismissed.

16. I have heard the learned counsel for the parties and have gone through the case file carefully.

17. With the consent of the parties, the present appeal is finally heard at the admission stage.

18. It is the precise case of the plaintiff/appellant that mutation No. 287 has been wrongly attested in favour of defendant No.1 with respect to the suit land measuring 0-1 bigha comprised in Khasra No. 251/221/70/78/1. It is a case of the plaintiff/appellant that 0-1 bigha of the land was wrongly deducted from the suit land and the same was

wrongly shown in the ownership and possession of defendant No.1 on the basis of the mutation No.287. The deduction of one biswa of land out of the suit land and thereafter execution of the sale deed in favour of defendant No.2 dated 29.01.2001 has been challenged being null and void.

19. In order to support his contention, the plaintiff examined PW-1, Ram Lal, Ahalmad, who has stated that with respect to correction of tatima, neither any application was received nor any order was passed by the Assistant Collector, 1st Grade on 17.07.1998.

20. Smt. Asha Sharma has been examined as PW-2. In her deposition she has stated that she has sold the suit land to Vijay Kumar, Chaman Lal and Dasaundi Ram from Khasra No.76-77 vide sale deed dated 16.11.1993. She has further stated that after the sale of the suit land, the possession of the same was handed over to the plaintiff. She has stated that on the spot, no land is owned and possessed by the defendants.

21. The plaintiff himself got examined as Pw-3. He has stated that he has purchased 3 biswa of land from Dasaundi Ram and his brothers vide registered sale deed

Ext.PW2/A on 16.11.1993. There was already two storeyed house constructed over the same . After the execution of the sale deed, he got possession of the same and pursuant to that necessary mutation was also attested.

22. As per plaintiff apart from that on 19.06.1984, 6 biswa of land was purchased by him for which mutation No.147 was attested in his favour. He has stated that defendant No.1 has sold the land from this Khasra Number to about more than 20 persons. He has stated that adjoining to the land of plaintiff, there is no land of the defendants and that defendant No.1 in collusion with the revenue staff has changed karukans and after changing the revenue record the land of the plaintiff was deducted and was incorporated in the land of defendant No.1.

23. The plaintiff has examined Shankar Dass as PW-4. He has stated that he has seen the suit land and the same was purchased from Dasaundi Ram etc and the plaintiff is the owner in possession of same. He has further stated that no land was left for Hardei, and the revenue authorities, in connivance with the defendants, deducted the plaintiff's land and entered it in the name of Defendant No. 1.

24. In order to rebut the evidence of the plaintiff, defendant Hardei entered into the witness box as DW-1 and she has stated that she is the owner in possession of the suit land. She has further stated that she had sold the suit property to defendant No.2 and the said land is vacant on the spot. It is further stated that when she obtained the possession of the same, she was beaten up. She sold the suit land to defendant No.2 for a sum of Rs. 10,000/-. She got correction of the said land and thereafter the same was demarcated and the said demarcation was conducted by the Kanungo and Patwari.

25. Similarly, the defendants examined DW-2 Inderpal, DW-3 Savitri Devi and DW-4 Nasib Singh.

26. It has come on record that except the bald statement of the plaintiff, no concrete and substantial evidence has been placed on record in order to substantiate and corroborate that area measuring 0-1 bigha which was sold by defendant No.1 to defendant No.2 is a part of Khasra Nos. 76 and 77. The record shows that the plaintiff is the owner in possession of Khasra Nos. 76 and 77 and it is the case of the plaintiff that the revenue authorities in collusion with the defendants excluded 1 biswa of the land

from the suit land and the same was transferred to the defendants illegally by virtue of the correction proceedings.

27. The plaintiff has not been able to establish that the correction in the revenue entries was got done by deducting 1 biswa of the suit land and that the same was illegally shown to be owned and possessed by defendant No.1.

28. The defendants in order to prove their case have placed on record documents Ext. D-1 to D-10 which show that it is the defendants who are the owners in possession of the suit land. Initially it was defendant No.1 and thereafter after the sale, defendant No.2 has become the owner of the said portion of the suit land. No evidence or material has been placed on record to demonstrate that how the sale deed as executed by Defendant No.1 in favour of defendant No.2 is bad in the eyes of law save and except the bald statement of the plaintiff. It is the case of the plaintiff that the land belonging to him, comprised in Khasra Nos. 76-77, was sold by Defendant No. 1 on the basis of changes in the revenue record, which were got effected by the revenue authorities in collusion with the defendants. It has come on record that after obtaining the demarcation, which was

taken by defendant No.1, the area was carved out and thereafter no measurement took place on the spot. The plaintiff has failed to establish and prove that he is the owner in possession of 1 biswas of land comprised in Khasra No. 251/221/78/1. Nothing has been placed on record to corroborate the said plea.

29. When asked a specific question, the learned counsel failed to provide a satisfactory answer regarding the basis on which it is claimed that the area of the plaintiff's land was reduced and allotted to defendant No. 1 by the revenue authorities.

30 The learned Courts below have concurrently, rightly and validly appreciated point in controversy since the plaintiff has failed to prove his case beyond all reasonable doubt.

31. The Hon'ble Supreme Court in catena of judgments has held 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.

32. The Hon'ble Supreme Court while dealing with scope of interference under Section 100 in Civil Appeal Nos. 2843/2844/2010, titled *Nazir Mohamed Vs. J. Kamala & ors* decided on 27.08.2020, held that a second appeal only lies on a substantial question of law. It is not open to re-agitate facts or to call upon the High Court to re-analyze or re-appreciate evidence in a second appeal. Section 100 of the Code of Civil Procedure restricts the right of second appeal only to those cases, where a substantial question of law is involved. Relevant paras of the aforesaid judgment read as under:-

“25. A second appeal, or for that matter, any appeal is not a matter of right. The right of appeal is conferred by statute. A second appeal only lies on a substantial question of law. If statute confers a limited right of appeal, the Court cannot expand the scope of the appeal. It was not open to the Respondent-Plaintiff to re-agitate facts or to call upon the High Court to reanalyze or re-appreciate evidence in a Second Appeal.

26. Section 100 of the CPC, as amended, restricts the right of second appeal, to only those cases, where a substantial question of law is involved. The existence of a “substantial question of law” is the sine qua non for the exercise of jurisdiction under Section 100 of the CPC.”

33. A question of law must arise from the pleadings. It becomes substantial question of law, if it is debatable, not previously settled by law of land or any binding precedent, must have a material bearing on the decision of the case. A pure finding of fact is not open to challenge in second appeal even if appreciation of evidence is palpably erroneous & finding of fact incorrect.

“29. The principles for deciding when a question of law becomes a substantial question of law, have been enunciated by a Constitution Bench of this Court in Sir Chunilal v. Mehta & Sons Ltd. v. Century Spg. & Mfg. Co. Ltd. 1, where this Court held:-

“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.”

30. In Hero Vinoth v. Seshammal 2, this Court referred to and relied upon Chunilal v. Mehta and Sons (supra) and other judgments and summarised the tests to find out whether a given set of questions of law were mere

questions of law or substantial questions of law.

31. The relevant paragraphs of the judgment of this Court in *Hero Vinoth (supra)* are set out hereinbelow:-

“21. The phrase ”substantial question of law”, as occurring in the amended Section 100 CPC is not defined in the Code. 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 or Article 133 (1) (a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance. In *Guran Ditta v. Ram Ditta [(1927-28) 515 IA 235 : AIR 1928 PC 172]* the phrase substantial question of law as it was employed in the last clause of the then existing Section 100 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case. In *Sir Chunilal case [1962 Supp (3) SCR 549 : AIR1962 SC 1314]* the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in

Rimmalapudi Subba Rao v. Noony Veeraju [AIR 1951 Mad 969 : (1951) 2 MLJ 222 (FB)] : (Sir Chunilal case [1962 Supp (3) SCR 549 : AIR 1962 SC 1314] , SCR p. 557)

“When a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular fact of the case it would not be a substantial question of law.”

32. To be “substantial”, a question of law must be debatable, not previously settled by the law of the land or any binding precedent, and must have a material bearing on the decision of the case and/or the rights of the parties before it, if answered either way.

33. To be a question of law “involved 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 Courts of facts, and it must be necessary to decide that question of law for a just and proper decision of the case.

34. Where no such question of law, nor even a mixed question of law and fact was urged before the Trial Court or the First Appellate Court, as in this case, a second appeal cannot be entertained, as held by this Court in *Panchagopal Barua v. Vinesh Chandra Goswami*.

35. Whether a question of law is a substantial one and whether such question is involved in the case or not, would depend on the facts and circumstances of each case. The paramount

overall consideration is the need for striking a judicious balance between the indispensable obligation to do justice at all stages and the impelling necessity of avoiding prolongation in the life of any lis. This proposition finds support from *Santosh Hazari v. Purushottam Tiwari* .

36. In a Second Appeal, the jurisdiction of the High Court being confined to substantial question of law, a finding of fact is not open to challenge in second appeal, even if the appreciation of evidence is palpably erroneous and the finding of fact incorrect as held in *Ramchandra v. Ramalingam* .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.

37. The principles relating to Section 100 CPC relevant for this case may be summarised thus :

(i) An inference of fact from the recitals or contents of a document is a question of fact, but the legal effect of the terms of a document is a question of law. Construction of a document, involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue.

(iii) A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the Court below has decided the matter, either ignoring or acting contrary to 14 such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iv) The general rule is, that High Court will not interfere with the concurrent findings of the Courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. A decision based on no evidence, does not refer only to cases where there is a total dearth of evidence, but also refers to case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

34. In *Hero Vinoth (minor) vs. Seshammal*, (2006) 5 SCC 545, the Hon'ble Supreme Court 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 24 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.”*

35. All the points raised and urged in the instant Second Appeal are purely question of fact. No question of law much less the substantial question of law is involved in the present appeal. Appellant/defendant has failed to demonstrate any perversity in the impugned judgments and decrees, therefore, the present appeal being devoid of any merit, deserves to be dismissed. Ordered accordingly.

Pending miscellaneous application (s), if any, shall also stand disposed off.

(Ramesh Verma),
Judge

20.04.2026 (veena)