NEUTRAL CITATION NO. 2025:MPHC-IND:22350

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SANJEEV S KALGAONKAR

ON THE 14TH OF AUGUST, 2025

SECOND APPEAL NO. 1666 OF 2025

RAMCHANDRA (DECEASED) THROUGH LEGAL REPRESENTATIVES

Versus

BABULAL & ANOTHER

Appearance:

Shri Sunil Jain senior advocate with Ms. Nandini Sharma, advocate for the appellant.

Shri Nilesh Agrawal, advocate for the respondent.

ORDER

Heard on admission.

The present second appeal under Section 100 of the Code of Civil Procedure is filed feeling aggrieved by the judgment and decree dated 15.5.2025 passed in Regular Civil Appeal No. 25/2023 by the Vth District Judge, Dr. Ambedkar Nagar, Mhow affirming the judgment and decree dated 13.3.2023 passed in Regular Civil Suit No. 160A/2018 by IInd Civil Judge Junior Division, Dr. Amebedkar Nagar, Mhow. Thus, the present appeal is filed assailing the concurrent finding with regard to grant of decree of possession in favour of plaintiff (respondent herein) on the disputed property and also declaration to the effect that agreement to sale dated 18.1.1989 is not binding on the plaintiff.

2. Plaintiff Babulal had filed suit for declaration, permanent injunction, and recovery of possession against his brother Ramchandra *inter-alia*

NEUTRAL CITATION NO. 2025:MPHC-IND:22350

pleading that the suit properties were received by him in family partition in the year 1993-94. Accordingly, the suit properties were recorded in his name in the revenue records after mutation of shares in favour of himself, his brothers and father. He had permitted his brother Ramchandra to cultivate the disputed land for a 50% profit share. In the year 2001-02, he came to know that Ramchandra had mutated his name in the revenue records on the disputed lands without his consent and knowledge, therefore, he had applied for correction of record under Sections 115 and 116 of Madhya Pradesh Land Revenue Code. Ramchandra appeared in the proceeding before Tehsildar, Mhow and pleaded that he had purchased the properties *vide* agreement to sale dated 18.1.1989. The agreement to sale is a forged document. Tehsildar, Mhow *vide* order dated 31.1.2018 referred the parties to the Court of competent jurisdiction to determine the issue of title on the land. Accordingly, present suit was filed for declaration of title and declaring that the agreement dated 18.1.1989 is void and not binding on the plaintiff and also for recovery of possession of disputed property.

3. The defendant Ramchandra filed written statement denying the claim of plaintiff. On completion of trial, the learned Court of first instance granted the relief claimed in the plaint. The legal representatives of Ramchandra filed appeal assailing the judgment and decree of the Court of first instance. The first appellate Court dismissed the appeal and affirmed the judgment of the Court of first instance.

4. Learned counsel for the appellant in addition to the facts and ground pleaded in the appeal memo contended that the Court of first instance and the first appellate Court committed error in finding that the defendant had admitted partition of the family property in the year 1994. The Court of first instance and first appellate court committed error in concluding that the agreement to sale dated 18.1.1989 is not valid as there was no partition

NEUTRAL CITATION NO. 2025:MPHC-IND:22350

between the parties at the time of execution of such agreement. Learned counsel referred to the special pleading para 2 of the written statement and the evidence of DW-1 to contend that it was specifically stated that the partition between the parties took place in the year 1976. Therefore, the finding and conclusion of the Court of first instance and the first appellate Court based on admission of partition in the year 1993-94 is perverse being against the pleading and evidence on record. Learned counsel further contended that despite categorical evidence of handwriting expert on record, the Court of first instance and first appellate Court committed gross error in holding that the agreement dated 18.1.1989 is invalid and not binding on the plaintiff. Learned counsel further argued that the defendant was in possession in furtherance of the agreement to sale, therefore, his possession on the disputed property ought to be protected in view of Section 53-A of the Transfer of Property Act. Learned Court of first instance and the first appellate Court misinterpreted the provisions of Section 53A and held that in absence of the payment of consideration and steps for specific performance of contract, the possession of defendant cannot be protected. Learned court referred to the substantial questions of law proposed in the appeal memo which are as follows:-

1. Whether in absence of any pleading and evidence as to the non payment of the entire sale consideration the Courts below erred in giving its finding to decree the suit?
2. Whether the findings of the Courts below regarding alleged admission made by the appellants/defendant as to the partition runs contrary to the pleadings and evidence?
3. Whether in view of the fact that the Courts below have found proved the signature of plaintiff and his wife on Ex.D-1 and D-2 erred in discarding both the agreements to sale?
4. Whether the courts below erred in discarding the Ex.D-1 and D-2 for want of their registration?
5. Whether the findings of the courts below as to the readiness and willingness of the appellants regarding specific performance of

NEUTRAL CITATION NO. 2025:MPHC-IND:22350

the agreement is perverse in view of the fact that the names of the predecessor in title and thereafter the appellants already mutated in the revenue records?

6. Whether the courts below erred in not framing proper issues in accordance with the pleadings of the parties?

7. Whether findings of the courts below vitiated on account of misreading of evidence?

5. Learned counsel referring to the judgments of the Supreme Court in cases of ***Kulwant Kaur and others Vs. Gurdial Singh Mann (Dead) by LRs and others reported in (2001) 4 SCC 262*** and ***Rattan Dev Vs. Pasadm Devi reported in (2002) 7 SCC 441*** requested that the appeal deserves hearing on merits, therefore, present second appeal be admitted on proposed substantial questions of law.

6. *Per contra*, learned counsel appearing for caveator (respondent) opposes the admission of appeal and submits that the Court of first instance and the first appellate court committed no error in concluding that defendant has failed to prove execution of the agreement to sale Ex. D-1, Ex-D-2 and Ex. D-3. The opinion of the handwriting expert is merely an opinion evidence. The Court of first instance and the first appellate Court have rightly concluded that the evidence on record makes the validity and execution of agreement dated 18.1.1989 doubtful. Learned counsel further contended that mere agreement to sale does not confer any right, title or interest in the property. Therefore, the Court of first instance and the first appellate court committed no error in granting decree of possession in favour of the plaintiff.

7. Heard learned counsel for the parties. Perused the record.

8. In the matter of ***Chandrabhan v. Saraswati,*** reported in ***(2022) 20 SCC 199,*** the Apex Court held as under:-

> **22.** It is well settled that a second appeal under Section 100 of the Civil Procedure Code, 1908 ("CPC") can only be entertained on a substantial question of law. In *H.P. Pyarejan* v. *Dasappa*, (2006) 2 SCC 496, this Court held :

NEUTRAL CITATION NO. 2025:MPHC-IND:22350

> "*16*. In our opinion, therefore, the judgment of the High Court suffers from serious infirmities. It suffers from the vice of exercise of jurisdiction which did not vest in the High Court under the law. Under Section 100 of the Code (as amended in 1976) the jurisdiction of the High Court to interfere with the judgments of the courts below is confined to hearing on substantial questions of law. Interference with finding of fact by the High Court is not warranted if it involves re-appreciation of evidence (see *Panchugopal Barua* v. *Umesh Chandra Goswami*, (1997) 4 SCC 713 and *Kshitish Chandra Purkait* v. *Santosh Kumar Purkait*, (1997) 5 SCC 438). The High Court has not even discussed any evidence. No basic finding of fact recorded by the courts below has been reversed much less any reason assigned for taking a view contrary to that taken by the courts below. The finding on the question of readiness and willingness to perform the contract which is a mixed question of law and fact has been upset. It is statutorily provided by Section 16(1)(*c*) of the Act that to succeed in a suit for specific performance of a contract the plaintiff shall aver and prove that he has performed and has always been ready and willing to perform the essential terms of the contract which were to be performed by him other than the terms the performance of which has been prevented or waived by the defendant."

23. In Ram Prasad Rajak v. Nand Kumar & Bros., (1998) 6 SCC 748, this Court held that :

> "*7*. … Once the proceeding in the High Court is treated as a second appeal under Section 100CPC, the restrictions prescribed in the said Section would come into play. The High Court could and ought to have dealt with the matter as a second appeal and found out whether a substantial question of law arose for consideration. Unless there was a substantial question of law, the High Court had no jurisdiction to entertain the second appeal and consider the merits."

24. In Kshitish Chandra Purkait v. Santosh Kumar Purkait, (1997) 5 SCC 438, this Court held that existence of substantial question of law was the *sine qua non* for the exercise of jurisdiction under Section 100CPC.

****

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

> **32.1.** 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.
>
> **32.2.** 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. 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 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.

32.3. The general rule is that the High Court will not interfere with findings of facts arrived at by 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. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.

9. The Supreme Court in case of ***Naresh and others Vs. Hemant and others*** reported in ***(2022) SCC 802*** held as under:-

11. The High Court invoked the presumption without proper consideration and appreciation of the facts considered and dealt with by two courts holding by reasoned conclusions why the presumption stood rebutted on the facts. The High Court also committed an error of record by holding that there was no evidence that Trimbakrao Ingole alone had constructed the house, a finding patently contrary to the admission of PW1 in his evidence. The fact that mutation also was done in the name of Trimbakrao Ingole alone which remain unchallenged at any time was also not noticed. The conclusion of the High Court that improper appreciation of evidence amounted to perversity is completely unsustainable. No finding has been arrived at that any evidence had been admitted contrary to the law or that a finding was based on no evidence only in which circumstance the High Court could have interfered in the second appeal.

12. The High Court therefore manifestly erred by interfering with the concurrent findings on facts by two courts below in exercise of powers under Section 100, Civil Procedure Code, a jurisdiction confined to substantial questions of law only. Merely because the High Court may have been of the opinion that the inferences and conclusions on the evidence were erroneous, and that another conclusion to its satisfaction could be drawn, cannot be justification for the High Court to have interfered.

13. In Madamanchi Ramappa vs. Muthaluru Bojappa, (1964) 2 SCR 673, this court with regard to the scope for interference in a second appeal with facts under Section 100 of the Civil Procedure Code observed as follows:

"12. ….The admissibility of evidence is no doubt a point of law, but once it is shown that the evidence on which courts of fact have acted was admissible and relevant, it is not open to a party feeling aggrieved by the findings recorded by the courts of fact to contend before the High Court in second appeal that the said evidence is not sufficient to justify the findings of fact in question. It has been always recognised that the sufficiency or adequacy of evidence to support a finding of fact is a matter for decision of

> the court of facts and cannot be agitated in a second appeal. Sometimes, this position is expressed by saying that like all questions of fact, sufficiency or adequacy of evidence in support of a case is also left to the jury for its verdict. This position has always been accepted without dissent and it can be stated without any doubt that it enunciates what can be properly characterised as an elementary proposition. 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 s. 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."

10. The Supreme Court in case of ***Rattan Dev*** (*supra*) held that non application of mind by the first appellate court to the evidence available on record raises a substantial question of fact requiring hearing of second appeal on merits. The first appellate Court is bound to apply mind to all the evidence available on record and test the legality of findings arrived at by the Court of first instance. In case of ***Kulwant Kaur*** (*supra*), it was observed that:-

> **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 stands 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 dealt 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-a-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. In this context reference be had to Section 103 of the Code which reads as below:

NEUTRAL CITATION NO. 2025:MPHC-IND:22350

> *103. In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal-*
> *(a) which has not been determined by the lower Appellate Court or by both the Court of first instance and the lower Appellate Court, or*
> *(b) which has been wrongly determined by such Court or*
> *(c) Courts by reason of a decision on such question of law as is referred to in the Section 100.*
>
> 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, but 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.

11. The material on record is examined, in light of the aforestated preposition of law.

12. The Court of first instance and the first appellate Court referred to the admission by defendant in paragraph 1 of the written statement. The defendant in para 1 of the written statement has made clear and unequivocal admission to the fact that there was a partition between the plaintiff, defendant no.1 and other brother in the year 1993-94 and the plaintiff had received the suit properties situated in village Harsila Tehsil Mhow in the partition. However, in para 2 of the special pleading in the written statement, the defendant had pleaded that Mangilal Ji (father of the plaintiff and defendant No.1) had partitioned the ancestral property in his lifetime in year 1976. The plaintiff has sold the properties of his share to defendant No. 1 on 18.1.1989. Mangilal had executed a will dated 9.3.2015 regarding the properties came to his share in the partition. But the defendant has not denied the factum of partition in the year 1993-94 which he had admitted in para 1 of the written statement.

12. The Supreme court in the case of ***Bharat Singh Vs. Bhagirathi*** reported in ***AIR 1966 SC 405*** held as under:-

> "**19.** Admissions have to be clear if they are to be used against the person making them. Admissions are substantive evidence by themselves, in view of Sections 17, and 21 of the Indian Evidence Act, though they are not conclusive proof of the

> matters admitted. We are of opinion that the admissions duly proved are admissible evidence irrespective of whether the party making them appeared in the witness box or not and whether that party when appearing as witness was confronted with those statements in case it made a statement contrary to those admissions. The purpose of contradicting the witness under Section 145 of the Evidence Act is very much different from the purpose of proving the admission. Admission is substantive evidence of the fact admitted while a previous statement used to contradict a witness does not become substantive evidence and merely serves the purpose of throwing doubt on the veracity of the witness. What weight is to be attached to an admission made by a party is a matter different from its use as admissible evidence. (emphasis added)

(***Thiru John Vs. Returning Officer and others*** reported in ***AIR (1977) 3 SCC 540*** and ***Sardar Govindrao Mahadik and another Vs. Devi Sahai and another*** reported in ***(1982) 1 SCC 237*** also relied).

13. With regard to the proof of prior partition in year 1976, Ganesh (DW-1) and Ramesh Chandra (DW-2) in their evidence made general and omnibus statement that the family partition was executed in year 1986 as against pleading of the partition in the year 1976. In the cross-examination para 19, Ganesh (DW-1) failed to provide details of the partition, rather, he has expressed ignorance about partition between his father, uncle and grand-father. Ramesh Chandra (DW-2) in para 22 of cross-examination admitted that immediately after partition share of his father and brothers were recorded in the revenue records. The revenue records *Khasra Panchashala* (Ex.P-1, Ex.P-2 & Ex.P-3) show that the disputed property was recorded in the name of Mangilal from 1980 to 1994. In the year 1993-94, the mutation in favour of Babulal was recorded. Thus, the conclusion and finding of the Court of first instance with regard to the circumstances for doubting the execution of the agreement to sale dated 18.1.1989 cannot be said to be perverse being against the weight of evidence on record.

15. The learned first appellate Court relied on the judgments in cases of ***Padum Kumar Vs. State of Uttar Pradesh*** reported in ***(2020) 3 SCC 35*** and ***Rajeshbhai Muljibhai Patel Vs. State of Gujarat*** reported in ***(2020) 3 SCC 794*** and rightly concluded that the report of handwriting expert is an opinion

NEUTRAL CITATION NO. 2025:MPHC-IND:22350

evidence only. It needs to be considered in view of direct and circumstantial evidence available on record. Therefore, the conclusion of the Court of first instance as well as the first appellate Court doubting the execution of agreement to sale dated 18.1.1989 cannot be discarded as perverse. Both the courts came to the conclusion that agreement to sale dated 15.8.2000 (Ex.D-2) and the document of sale dated 17.3.2001(Ex.D-3) being agreement to sale only does not create any right, title or interest in the suit property. Both the courts committed no error in relying upon the judgment of the Apex Court in cases of ***Suraj Lamp Industries Vs. State of Haryana*** *reported in* ***(2012) 1 SCC 656*** in this regard. The Court of first instance in para 25 and 26 of the judgment has given a reasoned finding on proper appreciation of evidence on record with regard to failure of defendant to prove payment of consideration in furtherance of the agreements (Ex.D-2 and Ex.D-3). The first appellate Court in para 26 to 29 considered the necessities for protection of possession under Section 53-A of the Transfer of Property Act. The first appellate Court committed no error in concluding that the defendant had failed to prove to have taken steps in furtherance of the agreement to sale, therefore, his possession cannot be protected. In ***Nanjegowda and another Vs. Gangamma and others*** reported in ***(2011) 13 SCC 232,*** while dealing with protection under Section 53-A of the Transfer of Property Act, it has been held that:-

> 9. From a plain reading of the aforesaid provision, it is evident that a party can take shelter behind this provision only when the following conditions are fulfilled. They are:
>
> (i) The contract should have been in writing signed by or on behalf of the transferor;
>
> (ii)The transferee should have got possession of the immovable property covered by the contract;
>
> (iii)The transferee should have done some act in furtherance of the contract; and
>
> (iv)The transferee has either performed his part of the contract or is willing to perform his part of the contract.
>
> A party can take advantage of this provision only when it satisfies all the conditions aforesaid. All the postulates are *sine qua non* and a party cannot derive benefit by fulfilling one or more conditions.

15. Both the Courts committed no error in holding that mere revenue mutation does not confer any title on disputed property in favour of defendant. Thus, neither gross and manifest error nor perversity is made out in the conclusions of the Court of first instance or the first appellate Court .

16. Consequently, no substantial question of law necessitating hearing of present second appeal is made out. Hence, the appeal stands dismissed.

Both the parties shall bear their own cost.

C.C.as per rules.

(SANJEEV S KALGAONKAR)
JUDGE

BDJ

BHUNESH
WAR DATT
Digitally signed by BHUNESHWAR DATT
DN: c=IN, o=HIGH COURT OF MADHYA PRADESH BENTCH AT INDORE, ou=HIGH COURT OF MADHYA PRADESH BENTCH AT INDORE, 2.5.4.20=3fb5bcda9fd75d95d6c7cdcbd092ee5a74a94a5534aed3a66d9385cfcfc201e0, postalCode=452001, st=MADHYA PRADESH, serialNumber=89FD75A8D0C99E05779A327974E46BC85102826CE0604B211E4C91102B4D1269, cn=BHUNESHWAR DATT
Date: 2025.08.15 14:50:45 +05'30'