2026:HHC:28536

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 191 of 2023
Reserved on: 24.06.2026
Date of decision:14.07.2206

Ravinder Pal Singh ...Appellant

Versus

Pankaj Chandel ...Respondent

Coram:

The Hon'ble Mr. Justice Romesh Verma, Judge.
Whether approved for reporting?[1] *Yes.*

For the appellant : Mr. Deepak Bhasin, Senior Advocate with Mr. Sambhav Bhasin, Advocate.

For the respondent : Mr. Ajay Kumar, Senior Advocate with Ms. Vanshika Sharma, Advocate.

Romesh Verma, Judge :

The present appeal arises out of judgment and decree as passed by learned Additional District Judge, Sundernagar, District Mandi, H.P., dated 31.12.2022, whereby the appeal filed by the defendant was dismissed and the judgment and decree as passed by learned Civil Judge, Court No.2, Sundernagar, District Mandi, H.P. dated 23.12.2019 was affirmed, whereby the suit for specific performance of agreement as instituted by the plaintiff was ordered to be decreed.

2. The facts as emerge in the present case are that the plaintiff/respondent filed a suit for specific performance of agreement

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

to sell dated 15.10.2007. As per the averments as made in the plaint, it was stated that the land comprised in Khewat No.259, Khatauni Nos.428 to 438, measuring 282 Sq meters (to the extent of the share of the defendant), situated at Muhal Pungh Hadbast No.26/7, Tehsil Sundernagar, District Mandi, H.P., is recorded in the ownership and possession of the defendant. The defendant intended to sell the suit property and entered into an agreement for sale on 15.10.2007. It was agreed between the parties that the defendant shall sell the suit property to the plaintiff for a consideration amount of Rs.3,50,000/- out of which Rs.2,10,000/- i.e. Rs.1,75,000/- were received at the time of execution of sale agreement and Rs.35,000/- were received just after the execution of the agreement on the same day by the defendant. The possession of the land was delivered to the plaintiff and the remaining amount was agreed to be received by the defendant on or before 15.01.2008 on the execution of the sale deed in favour of the plaintiff.

3. It is the case of the plaintiff that the defendant was verbally requested by the plaintiff that he is ready and willing to perform his part of agreement dated 15.10.2007 and the sale deed should be executed accordingly. However, the defendant did not pay any heed to the request made by the plaintiff and he delayed the matter on the one pretext or the other. The plaintiff was constrained to issue legal notice upon the defendant on 02.08.2010 through

registered post and UPC, but the defendant neither replied nor became available to perform his part of the agreement. It was averred that the cause of action accrued to the plaintiff on 15.10.2007, when the defendant executed the sale agreement with the plaintiff qua the suit property and on 02.08.2010, when the legal notice was served upon the defendant with the request to execute sale deed. Therefore, the plaintiff prayed for the passing of decree for specific performance of agreement dated 15.10.2007 in favour of the plaintiff on receiving the sale consideration amount against the defendant with costs.

4. The suit was contested by the defendant by raising various preliminary objections such as maintainability, existence of a valid and enforceable agreement, valuation etc. On merits, it was stated by the defendant in the written statement that he never intended to sell the land nor entered into an agreement of sale on the date as alleged in the plaint. Further, it was denied that the defendant received any amount of consideration or ever executed any agreement of sale in favour of the plaintiff. Since no agreement was executed between the parties, the question of delivering the possession of the suit property to the plaintiff does not arise. The defendant did not enter into, execute or get attested any agreement with the plaintiff and the agreement, if any, produced by the plaintiff is false, frivolous, manufactured and fraudulently obtained. The defendant prayed for the dismissal of the plaint as instituted by the plaintiff.

5. The plaintiff filed replication by reiterating all the averments as made in the plaint.

6. Learned trial Court framed issues in the matter on 05.09.2011 in the following manner:

> 1. *Whether the defendant had entered into an agreement to sell qua the suit land with the plaintiff on 15-10-2007, as alleged? OPP.*
> 2. *Whether the defendant received a part consideration of Rs. 2,10,000/- in pursuance of the alleged agreement to sell as alleged? OPP.*
> 3. *Whether the possession of the suit land was delivered by the defendant to the plaintiff, as alleged? OPP*
> 4. *Whether the plaintiff is entitled to the decree of Specific Performance of the agreement, as prayed for? OPP*
> 5. *Whether the suit is not maintainable in the present form? OPD*
> 6. *Whether this court has no jurisdiction to grant a decree for Specific Performance? OPD*
> 7. *Whether the suit is not properly valued for the purpose of court fee? OPD*
> 8. *Relief.*

7. Learned trial Court directed the respective parties to adduce evidence in support of their contentions and vide its judgment dated 23.12.2019, decreed the suit as filed by the plaintiff against the defendant.

8. Feeling dissatisfied, the defendant preferred an appeal in the Court of learned Additional District Judge, Sundernagar, District Mandi on 17.02.2022. Learned first appellate Court vide its judgment

and decree dated 31.12.2022 dismissed the appeal as preferred by the defendant/appellant.

9. Still feeling aggrieved, the defendant has approached this Court by filing the instant regular second appeal.

10. It is contended by Mr. Deepak Bhasin, learned Senior Counsel, duly assisted by Mr. Sambhav Bhasin, Advocate, that the impugned judgments and decrees as passed by learned Courts below are erroneous and liable to be quashed and set aside. He submitted that the learned Courts below have erred by not framing the proper and appropriate issues, as a result of which, great prejudice has been caused to his client. He would submit that the plaintiff has failed to plead and prove readiness and willingness in order to obtain the decree of specific performance of agreement to sell dated 15.10.2007. He further submitted that neither any agreement to sell was entered into between the parties nor the documents, which have been placed on record, are the result of misrepresentation, collusion and fraud.

11. On the other hand, Mr. Ajay Kumar, learned Senior Counsel, duly assisted by Ms. Vanshika Sharma, Advocate, has defended the impugned judgments and decrees as passed by learned Courts below. He submitted that there are concurrent findings of facts as returned by learned Courts below. Therefore, while invoking powers under Section 100 of CPC, this Court will not interfere in the well reasoned judgments and decrees as passed by learned Courts below.

He submitted that the trial Court, after appreciating the oral as well as documentary evidence placed on record, has rightly decreed the suit for specific performance and those findings have been affirmed in appeal.

12. With the consent of the parties, the appeal is admitted for final consideration on the following substantial questions of law:

1. Whether the judgments and decrees as passed by learned Courts below are erroneous on account of mis-appreciation and misconstruction of oral as well as documentary evidence placed on record.
2. Whether the learned Courts below have erred by granting decree of specific performance of contract without framing of issue of readiness and willingness and in the absence of any pleading or proof in that regard?

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

14. The plaintiff/respondent instituted a suit before the learned trial Court for grant of decree for specific performance of agreement dated 15.10.2007. It is the case of the plaintiff that the defendant is owner-in-possession of the suit land comprised in Khewat No.259, Khatauni Nos.428 to 438, measuring 282 Sq meters (to the extent of the share of the defendant), situated at Muhal Pungh, Hadbast No.26/7, Tehsil Sundernagar, District Mandi, H.P. The defendant executed an agreement to sell dated 15.10.2007 at Sundernagar for total sale consideration of Rs.3,50,000/-. The plaintiff has stated that

out of total sale consideration, a sum of Rs.2,10,000/- i.e. Rs.1,75,000/- was received by the defendant at the time of execution of sale agreement and Rs.35,000/- was received just after the execution of agreement on the same day by the defendant. The defendant was verbally requested by the plaintiff, who stated that he is ready and willing to perform his part of agreement and that the necessary sale deed should be executed in that regard. However, the defendant did not accede to the request of the plaintiff. The plaintiff was compelled to issue legal notice for the redressal of his grievances on 02.08.2010, but the same was never replied by the defendant. Therefore, it was prayed that the suit as instituted for specific performance of agreement dated 15.10.2007 be decreed in favour of plaintiff.

15. The defendant has taken a defence of total denial in the present case. The execution of agreement to sell, payment of sale consideration and delivery of possession have been flatly denied by the defendant in his written statement. It has been stated by the defendant in his written statement that he never entered into an agreement with the plaintiff and in case any such agreement is produced by the plaintiff, the same is false, frivolous, manufactured and fraudulently obtained. The sum and substance of the defence as put forward by the defendant is that he neither entered into an

agreement with the plaintiff nor received any sale consideration or delivered the possession to the plaintiff in any manner.

16. A copy of agreement to sell has been placed on record as Ext.PW-1/A. The said agreement was signed by the respective parties, namely, Pankaj Chandel and Ravinder Pal Singh. The said agreement to sell was witnessed by Ram Nath, son of Shri Churu Ram and Daya Ram, son of Mahi Chand.

17. In order to corroborate and prove the execution of agreement, plaintiff, Pankaj Chandel, entered into the witness box as PW-1. In his deposition, he stated that the defendant had entered into an agreement with him with respect to land measuring 282 Sq meters on 15.10.2007. In that regard, Ext. PW-1/A was executed between the parties. He stated that the said agreement has been duly signed by him and the defendant. Out of the total sale consideration, a sum of Rs.1,75,000/- was paid to the defendant at the time of preparation of agreement to sell and on the very same day Rs.35,000/- was paid to the defendant. The said amount was paid in the presence of witness Shri Shiv Singh. He stated that the possession of land pertaining to agreement was delivered on the spot to the plaintiff even though, the land is joint. He stated that after the preparation of the agreement, he made a request to the defendant for the execution of sale deed, but the defendant never came despite his assurance. In December 2007, he, along with Shiv Singh, went to the house of defendant, who

assured them that in one or two days, the sale deed would be executed. He stated that Shiv Singh had introduced him to the defendant. Therefore, he made a request to Shiv Singh to accompany him to the house of the defendant. On the very same day, the defendant had executed a power of attorney in his favour. He stated that when on the oral request of the plaintiff, the defendant did not execute the sale deed, then on 2nd August, 2010, through his counsel, he sent a legal notice to the defendant by registered letter. The receipt of the UPC is Ext. PW-1/C and the receipt of register letter Ext.PW-1/D. Registered letter is Ext. PW-1/E, came back unclaimed, though UPC was never returned. Despite the issuance of notice, the defendant failed to execute the sale deed in his favour. He stated that even today he is ready to execute the sale deed. and in case the defendant does not acknowledge the receipt of Rs.35,000/-, he is ready to pay the said amount again.

18. PW-4 is the statement of Shiv Singh Sen. The affidavit, as placed on record, is Ext. PW-4/A. In his affidavit, he has stated that he knew the parties and had also seen the suit land situated at Mohal Pungh, Tehsil Sundernagar, District Mandi, which is recorded in the ownership of the defendant. Defendant Ravinder Pal told him that he wanted to sell the suit land measuring 282 Sq meters, situated at Mohal Pungh, Tehsil Sundernagar, District Mandi, H.P. PW-4 stated that the defendant had agreed to sell the suit land to the plaintiff

Pankaj Chandel and both the parties entered into an agreement to sell on 15.10.2007 for a total sale consideration of Rs.3,50,000/-. He stated that out of the same, the defendant received Rs.2,10,000/- from the plaintiff. The remaining amount was to be received by the defendant on or before 15.01.2008 on the execution of sale deed in favour of the plaintiff. In his cross-examination, nothing concrete could be extracted or elicited by the defendant.

19. PW-3 is the statement of R.S. Raghwa, Advocate. He has stated in his deposition that in May 2000, he was notified as Notary Public in the Sundernagar Sub Division, District Mandi. On 15.10.2007, Ext. PW-1/A was notarized by him. He stated that the said document was notarized on the asking of both the parties. He further stated that before notarizing the agreement to sell, he had read over the said document to the parties as well the witnesses. With respect to notarization of Ext. PW-1/A his stamps are marked as Mark 19, Mark 20, Mark 21, Mark 22 Mark 23 and Mark 24. The said notarization was incorporated at Serial No.2476 of his Register. In his cross-examination, he stated that he cannot say whether the transaction had been done in his presence or not. He denied that he is making the statement falsely. He stated that while notarizing the agreement, he knew the parties. He denied that, in connivance with the plaintiff, Ext. PW-1/A had been wrongly notarized by him.

20. PW-2 is the statement of Ram Nath. In his deposition, he has stated that the agreement to sell was entered into between the parties and he was a witness to it. Apart from him, the second witness was Daya Ram. He stated that he had duly appended his signatures on the agreement to sell and he can identify his signatures on it. He stated that they all had appended their signatures in the presence of each other and that R.S. Raghwa, Notary, had attested the said document. In his cross-examination, he stated that he is client of J.S. Chandel. Ext. PW-1/A was entered into between the plaintiff and the defendant near *Sharma Photostat*. The agreement to sell Ext. PW-1/A was typed in the afternoon. He also stated that on the said day, he had come on account of personal work. He stated that Pankaj Chandel, the plaintiff, had handed over the amount of sale consideration to defendant, Ravinder Pal, in his presence. He further stated that he did not know Ravinder Pal prior to the said date. He denied that the defendant, while executing Ext. PW-1/A and Ext. DA, was not present at Sundernagar.

21. In order to rebut the case of the plaintiff, defendant examined DW-1 Khem Chand, Junior Assistant, Municipal Council, Ghumarwin. In his deposition, he stated that he has brought the relevant records with respect to the leave application. He stated that Shiv Singh Sen, the Secretary, had obtained the leave from the office on 25.05.2007, 13.07.2007, 06.08.2007, 17.08.2007 to 18.08.2007,

01.09.2007, 06.09.2007, 17.10.2007, 19.10.2007 & 24.10.2007. As per the record, the said leave was sanctioned by the then President, Sat Pal. In his cross-examination, he stated that record produced by him in the Court was not handwritten by him. He denied that he is making the statement on the basis of incorrect record.

22. The defendant has examined DW-2 Shri Anil Sood, Stamp Vendor. He stated that in 2007, he was working as Stamp Vendor. With respect to Ext. PW-1/A, stamp papers were purchased from him. On Ext. PW-1/A, his signatures are appended.

23. DW-3 is the statement of Vinod Kumar Sharma, Executive Officer, Municipal Council, Ghumarwin, District Bilaspur. He stated that on 15.10.2007, as per the record, Shiv Singh was on duty. He stated that Ext. DW-3/C was prepared by him. He further stated that Ext. DW-3/D, the leave application also contains his signatures. In his cross-examination, he stated that at the relevant time, Shiv Singh was working as Secretary, therefore, the register with respect to his presence is not available. He stated the Secretary never marks his presence, and only the staff record their presence.

24. Defendant, Ravinder Pal, has filed his affidavit Ext. DW-4/A. In his affidavit he has stated that agreement dated 15.10.2007 Ext. PW-1/A was never executed by him nor he received the consideration amount from the plaintiff. He stated that he never approached the Public Notary to notarize the said agreement. He

stated that he never delivered any possession of the suit property to the plaintiff. He stated that he never received any legal notice Ext. PW-1/B. Ext. PW-1/C, Ext. PW-1/D and Ext. PW-1/E placed on record are false and frivolous and the same had been prepared in connivance with the postal department. In his cross-examination, he has stated that he had purchased 80 Sq meters and 202 Sq meters of land in 2002 from Smt. Asha Devi and the copy of the sale deed has been placed on record as Ext. PA. He admitted his signatures on Ext. PW-1/A, Mark-1, Mark-9, Mark-10, Mark-3, Mark-4, Mark-11 and Mark-17. He admitted his signatures on Ext. DA, which were encircled as Mark-1, Mark-2 and Mark-3. In his cross-examination, he stated that his signatures were obtained on the blank papers. He further stated that when he inquired as to why signatures were being obtained on the blank papers, he was told that it was a necessary requirement. He admitted that power of attorney Ext. DA was registered before the Tehsildar. Ext. DA was witnessed by Shri Daya Ram and Ram Nath. He denied that he received the sale consideration amount from the plaintiff. He duly acknowledged his signatures on Ext. PW-1/A. He stated that the blank papers on which his signatures were obtained, the plaintiff has prepared Ext. PW-1/A. He admitted that with respect to this fraudulent activity, he had not reported the matter to the police. He denied that as per the terms and conditions as stipulated in Ext. PW-1/A, he was required to execute the sale deed in favour of the plaintiff.

25. The defence, as set up by the defendant, in his written statement, is that he never entered into an agreement to sell with the plaintiff and the agreement, if any, produced by the plaintiff is false, frivolous and fraudulently obtained. It is vehemently contended by learned senior counsel for the appellant/defendant that the agreement to sell, as alleged, is a sham transaction and the same is the outcome of fraud.

26. Coming to this contention of learned senior counsel that Ext. PW-1/A is result of fraud, misrepresentation and fabrication, it would be apt to reproduce the relevant provisions of Order 6 Rule 4 CPC, which read as under:-

> *1. Pleading.—"Pleading" shall mean plaint or written statement. 1 2. Pleading to state material facts and not evidence—*
>
> *(1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.*
>
> *(2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.*
>
> *(3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.*
>
> *4. Particulars to be given where necessary.—In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid,*

particulars (with dates and items if necessary) shall be stated in the pleading."

27. From the perusal of Order VI CPC, it is specifically clear that every pleading shall contain and contain only a statement in a concise form of all the material facts on which the party pleading relies for his claim or defence, as the case may be. Order VI Rule 4 CPC requires parties to state specific particulars to support their claims of fraud and misrepresentation. Failure to do so leads to passing of adverse order. General allegation that fraud has been committed does not meet the legal requirement. A party who alleges fraud has the burden of proving its existence.

28. From the perusal of the written statement, it would be clear that there is no specific allegations qua fraud. In the written statement, only ground, which has been taken by the defendant is that he has not entered or executed any agreement to sell with the plaintiff and the agreement, if any, produced by the plaintiff is false, frivolous, manufactured and fraudulently obtained. No specific allegation pertaining to fraud, misrepresentation and fabrication has been levelled in the entire written statement. Pleadings to this effect are cryptic and vague. In case the evidence as led by the defendant is perused the same is of total denial no necessary ingredients as required under the law have been set up or established. By merely levelling general allegation will not prove his case. Therefore, no

reliance can be placed upon the same. In the present case, the allegation of fraud is illusory and not specifically pleaded or prayed.

29. It is well settled law that in order to prove plea of fraud, specific material/pleadings and evidence has to be placed on record and in absence of doing so, adverse inference has to be drawn against the said party.

30. The Hon'ble Supreme Court in ***Canara Bank vs. P. Selathal, (2020) 13 SCC 143*** has held as under:-

> *"11. Relying upon and following the decision of this Court in the case of O.C. Krishnan and others (C.O. No. 1305/1997 order dated 6.6.2000 (cal), thereafter the Division Bench of the Madras High Court in the case of M/s Cambridge Solutions Limited (2016) 5 LW 45, has rejected the plaint in which the order passed by the DRT was challenged, in exercise of powers under Order 7 Rule 11 (d) of the CPC. It is required to be noted that in the said case also there were allegations of fraud in the plaint and considering the averments in the plaint, it was found that the allegations of fraud are illusory. It is observed by the Division Bench in the said decision that specific instances and acts of fraud with evidence have to be pleaded in the plaint. It is further observed that mere statements are not enough. It is further observed that it is not sufficient if just fraud is pleaded and there must be material to show that the fraud is committed.*
>
> *12. Having considered the pleadings and the averments in the suits, more particularly the allegations of fraud, we find that the allegations of fraud are with respect to the partnership deed and there are no allegations at all with respect to mortgage created by the Guarantor – Shri Kallikutty and that too with respect to the deed of guarantee executed by the Guarantor. Much reliance is placed upon*

the judgment and order passed by the learned Magistrate holding the partners of the firm guilty. However, it is required to be noted that even in the said judgment passed by the learned Magistrate there is no reference to the deed of guarantee and/or the mortgage created by the Guarantor. Even the bank is not a party to the said proceedings. It is reported that against the judgment and order passed by the learned Magistrate, further appeal is pending. Be that as it may, considering the pleadings/averments in the suits and the allegations of fraud, we are of the opinion that the allegations of fraud are illusory and only with a view to get out of the judgment and decree passed by the DRT. We are of the opinion that therefore the suits are vexatious and are filed with a mala fide intention to get out of the judgment and decree passed by the DRT."

31. In ***H. S. Goutham vs. Rama Murthy (2021) 5 SCC 241***, the Hon'ble Supreme Court has held as under:-

"32. Before the learned Principal City Civil Judge, the judgment debtors led the evidence in support of their claim that the judgment and decree was obtained by fraud and mis-representation, which evidence was not led by them before the Executing Court when they submitted the objections and contended that the decree was obtained by fraud. That, thereafter, the learned Principal City Civil Judge submitted the report that the decree was obtained by fraud and on the basis of the report submitted by learned Principal City Civil Judge mainly, the High Court has set aside the judgment and decree by the impugned judgment and order. Thus, from the aforesaid it is crystal clear that all through-out there was a delay and negligence on the part of the judgment debtors in not initiating the appropriate proceedings at appropriate stage.

35. Now, so far as the procedure adopted by the High Court calling for the report from the learned Principal City Civil Judge on whether the decree was obtained by fraud or not is concerned, at the outset, it is required to be noted that at the time when the High Court passed such an order, there was already an order passed by the learned Executing Court dated 03.03.1998 overruling the objections raised by the judgment debtors that the decree was obtained by fraud and mis-representation. As observed by the learned Executing Court in the order dated 03.03.1998, the judgment debtors except the averments that the decree was obtained by fraud, mis-representation, neither any further submissions were made on that nor even the judgment debtors led any evidence in support of the same. Therefore, as such, learned Executing Court was justified in overruling the objection that the decree was obtained by fraud, mis-representation etc.

36. As per the settled principle of law, when the fraud is alleged the same is required to be pleaded and established by leading evidence. Mere allegation that there was a fraud is not sufficient. Therefore, subsequent order passed by the High Court calling for the report from the learned Principal City Civil Judge on the question whether the decree was obtained by fraud or not, can be said to be giving an opportunity to the judgment debtors to fill in the lacuna. Therefore, the course adopted by the High Court calling for the report from the learned Principal City Civil Judge cannot be approved.”

32. The Hon’ble Supreme Court in ***Electrosteel Castings Limited vs. UV Asset Reconstruction Company Limited (2022) 2 SCC 573*** has observed as under:-

"7.2 However, it is required to be noted that except the words used 'fraud'/'fraudulent' there are no specific particulars pleaded with respect to the 'fraud'. It appears that by a clever drafting and using the words 'fraud'/'fraudulent' without any specific particulars with respect to the 'fraud', the plaintiff – appellant/defendant herein intends to get out of the bar under Section 34 of the SARFAESI Act and wants the suit to be maintainable. As per the settled preposition of law mere mentioning and using the word 'fraud'/'fraudulent' is not sufficient to satisfy the test of 'fraud'. As per the settled preposition of law such a pleading/using the word 'fraud'/ 'fraudulent' without any material particulars would not tantamount to pleading of 'fraud'.

8. In case of Bishundeo Narain and Anr, 1951 SCC 447 in para 28, it is observed and held as under:

> *"22.... Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched may be, and the same applies to undue influence and coercion. See Order 6, Rule 4, Civil Procedure Code.*

8.1 Similar view has been expressed in the case of Ladli Parshad Jaiswal AIR 1963 SC 1279 and after considering the decision of the Privy Council in Bharat Dharma Syndicate vs. Harish Chandra 1937 SCC OnLine PC 24, it is held that a litigant who prefers allegation of fraud or other improper conduct must place on record precise and specific details of these charges. Even as per Order VI Rule 4 in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or *undue influence, particulars shall be stated in the pleading. Similarly in the case of K.C Sharma & Company, (2020) 15 SCC 209, it is held that 'fraud' has to be pleaded with necessary particulars. In Ram Singh and Ors. (1986) 4 SCC 209 , it is observed and held by this Court that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances by which the suit is barred by law of limitation.*

8.2 In the case of T. Arivandandam vs. T.V. Satyapal & Anr.(1977) 4 SCC 467, it is observed and held in para 5 as under: "5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits." 8.3 A similar view has been expressed by this court in the recent decision in the case of P. Selathal & Ors., (2020) 13 SCC 143."

33. In view of aforesaid exposition of law, submission of the learned senior counsel for the appellant/defendant that Ext.PW1/A is

result of fraud and misrepresentation does not hold good and said contention is rejected.

34. The next contention as raised by learned senior counsel for the appellant/defendant is that the learned Courts below have failed to frame proper and appropriate issues arising out of the pleadings of the parties. Learned Senior counsel for the appellant submitted that the issue with respect to readiness and willingness has not been framed by the learned Courts below, as a result of which great prejudice has been caused to the appellant.

35. A perusal of the record shows that the issues were framed by the learned trial Court on 05.09.2011 and it was ordered by the learned trial Court that the issues were read over and explained to the parties through their counsel. No other issue arose or pressed has been ordered in the same. It has been conceded by learned senior counsel for the appellant that no application was filed for the framing of additional issues nor any steps were taken in the Court. Therefore, since the issues were framed in the presence of learned counsel for the parties and no other issue was pressed at that stage, now at this stage, that too at the stage of second appeal, this plea is not available to the appellant. Even otherwise, the parties went to the trial fully well knowing their case. The pleadings and evidence as led by the parties on this aspect shows that parties were well aware about the issue involved and the case set up by the respective parties. The learned

counsel for the appellant has failed to establish that any prejudice has been caused to the appellant in the absence of framing of any issue. Parties were litigating fully knowing their case therefore, contention of learned Senior Counsel cannot be accepted.

36. Learned senior counsel for the appellant has then adverted to his next contention that the plaintiff has failed to plead and prove his readiness and willingness in order to obtain the decree for specific performance of agreement to sell. He submitted that, in view of the exposition of law as laid down by Hon'ble Apex Court, the plaintiff has failed to specifically aver in the pleadings and in his evidence, therefore, no decree could have been passed in the absence of any pleading qua the readiness and willingness.

37. For that, the Court has to advert to the plaint as filed by the plaintiff, whereby in para-3 of the same, the plaintiff has averred that the defendant was verbally requested by him that he is ready and willing to perform his part of agreement dated 15.10.2007 and that the sale deed should be executed. It has further been stated in the said para that the defendant did not pay any heed to the requests of the plaintiff, therefore, a legal notice was issued and served upon the defendant on 02.08.2010 through the registered post and UPC. The defendant neither replied nor became available to perform his part of the agreement. Therefore, the present suit.

38. A copy of the legal notice has been placed on record as Ext. PW-1/B and in the same, it has been stated by the plaintiff that on 15.10.2007, the parties entered into an agreement to sell with respect to the share of the defendant comprised in Khatauni Nos.428 to 438, total land measuring 282 Sq meters, situated at Muhal Pungh, Tehsil Sundernagar, District Mandi, H.P. for a total sale consideration of Rs.3,50,000/-.

39. It has been averred in the legal notice that the plaintiff has been requesting the defendant to execute the sale deed, but the latter is not paying any heed to the request of the plaintiff. Further, in para-3 it has been stated that the plaintiff is ready and willing to pay the remaining amount of sale consideration and bear the expenses of the registration of sale deed, including purchase of stamps etc. for giving effect to the sale of land under the agreement.

40. In order to substantiate the plea of readiness and willingness, learned senior counsel for the respondent has drawn the attention of this Court to the statement of PW-1 Pankaj Chandel, the plaintiff. In his deposition, he has stated that the agreement to sell was entered into between the parties on 15.10.2007. As per the agreement to sell Ext. PW-1/A, the defendant was to execute the sale deed prior to 15.01.2008. During this period, PW-1 stated that he sent various messages to the defendant for the execution of sale deed, but he did not turn up and kept on making promises. In December 2007,

PW-1, plaintiff, Pankaj Chandel along with Shiv Singh went to the house of the defendant. Even then, the defendant assured the plaintiff that in one or two days, the necessary sale deed would be executed. The defendant had also executed a power of attorney in favour of the plaintiff. He stated that when oral request of the plaintiff was not accepted by the defendant, he issued legal notice on 02.08.2010 through his counsel. Despite issuance of notice, the defendant did not execute the sale deed, therefore, he was constrained to institute the present suit. PW-1 stated in his deposition that from the time the agreement to sell was executed till the time when he was deposing before the Court, as per the terms and conditions of the agreement, the plaintiff was ready to execute the sale deed. He stated that he did not obtain a receipt for the payment of Rs.35,000/- and the defendant had told him that he need not to worry. The plaintiff further stated that in case the defendant does not acknowledge the receipt of Rs.35,000/- he is ready to pay the said amount to the defendant again.

41. Keeping in view the averments as made in the plaint, notice Ext. PW-1/B and the oral testimony of Pankaj Chandel, plaintiff, the necessary ingredients of readiness and willingness have been specifically pleaded and proved by him. Considering the fact that a sum of Rs.2,10,000/- was paid by the plaintiff to the defendant and in conjunction with the averments as made in the plaint, legal notice and the oral testimony, it can be inferred that the plaintiff was always ready

and willing to perform his part of the agreement to sell. The submission of learned senior counsel for the appellant that the necessary pleadings and proof as required under Section 16(C) of Specific Relief Act on readiness and willingness have not been proved by the plaintiff are not correct.

42. The Hon'ble Apex Court in ***Syed Dastagir vs T.R. Gopalakrishasetty, 1999(6) SCC 337*** has held that to gather true spirit behind a plea, it should be read as a whole. In construing a plea in any pleading, Courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of ones case for a relief. Such an expression may be pointed, precise, sometimes vague but still could be gathered what he wants to convey through only by reading the whole pleading, depends on the person drafting a plea. But to test, whether he has performed his obligations one has to see the pith and substance of a plea. Where a statute requires any fact to be pleaded then that has to be pleaded may be in any form. Same plea may be stated by different persons through different words, then how could it be constricted to be only in any particular nomenclature or word. Unless a statute specifically require for a plea to be in any particular form, it can be in any form. No specific phraseology or language is required to take such a plea. The language in Section 16(c) does not require any specific phraseology but only that the plaintiff must aver that he has performed

or has always been and is willing to perform his part of the contract. So the compliance of readiness and willingness has to be in spirit and substance and not in letter and form. So to insist for a mechanical production of the exact words of a statute is to insist for the form rather than essence. So absence of form cannot dissolve an essence if already pleaded.

43. The overall circumstances and the conduct on the part of the parties are relevant considerations for the purpose of deciding the issues and the prayer of the plaintiff in whose favour the execution of the agreement to sell has been held to be proved. Even while proving the readiness and willingness, the plaintiff is not required to make any averment that the plaintiff required executant of the agreement to sell to attend the office of the Sub-Registrar to execute the sale deed within the time agreed. The Court must take into consideration the conduct of the plaintiff prior and subsequent to filing of the suit along with other attending circumstances in a particular case. Whether the plaintiff was ready and was always ready to perform his part of contract may be inferred from the facts and circumstances of a particular case.

44. The Hon'ble Supreme Court in Civil Appeal No.5110 of 2021, titled ***Sughar Singh vs. Hari Singh (dead) through LRs & others***, has held as follows

> *"7. Even otherwise it is required to be noted that as such there were concurrent findings of fact recorded by the*

learned Trial Court as well as the learned First Appellate Court on readiness and willingness on the part of the plaintiff, which were on appreciation of evidence on record. Therefore, in exercise of powers under Section 100 of the CPC the High Court ought not to have interfered with such findings of fact unless such findings are found to be perverse. Having gone through the findings recorded by the learned Trial Court as well as the learned First Appellate Court on readiness and willingness on the part of the plaintiff, we are of the opinion that findings recorded cannot be said to be perverse and/or contrary to the evidence on record. On the contrary High Court has ignored the necessary aspects on readiness and willingness which are stated hereinabove including the conduct on the part of the parties.

8. Even the observations made by the High Court that Forms 47 and 48 of the Appendix A to the CPC provide for making an averment that the plaintiff has been "and still is ready and willing specifically to perform the agreement on his part" or that "the plaintiff is still ready and willing to pay the purchase money of the said property to the defendant" and that "there is non-compliance of Section 16(c) of the Specific Relief Act and the plaint does not even contain any averment that the plaintiff ever required defendant no.1 to attend the office of the Sub-Registrar to execute the sale deed within time agreed are too technical in the facts and circumstances of the case. The overall circumstances and the conduct on the part of the parties are relevant consideration for the purpose of deciding the aforesaid issues and the prayer of the plaintiff in whose favour the execution of the agreement to sell has been held to be proved. The High Court has given unnecessary stress on the word "still".

9. Even while proving the readiness and willingness the plaintiff is not required to make any averment that the *plaintiff required executant of the agreement to sell to attend the office of the Sub-Registrar to execute the sale deed within the time agreed. Even as held by this Court in the case of C.S. Venkatesh Vs A.S.C. Murthy (Dead) By Lrs. and Ors. reported in (2020) 3 SCC 280 to adjudge whether the plaintiff is ready and willing to perform his part of contract, the Court must take into consideration the conduct of the plaintiff prior and subsequent to filing of the suit alongwith other attending circumstances in a particular case. It is also further observed that whether the plaintiff was ready and was always ready to perform his part of contract may be inferred from the facts and circumstances of a particular case. It is further observed that it is not necessary for the plaintiff to produce ready money but it is mandatory on his part to prove that he has means to generate consideration amount. In the present case even it was not the case on behalf of the defendants and even there is no finding by the High Court that the plaintiff was not having any means to generate consideration amount. It is required to be noted that as per the last extension and the document executed the balance amount of sale consideration i.e. Rs.16,000/- was to be paid at the time of execution of the sale deed and earlier out of Rs.56,000/- of total sale consideration, Rs.40,000/- was already paid and there were two extensions at the instance of the original defendant No.1 who was his father-in-law.*

45. In ***N. Thirugnanam(dead) by LRs vs. Dr. R. Jagan Mohan Rao & others, (1995) 5 SCC 115***, it has been held by the Hon'ble Apex Court that Section 16(c) of the Specific Relief Act envisages that plaintiff must plead and prove that he had performed or has always been ready and willing to perform the essential terms of

the contract. In order to determine whether the plaintiff was ready and willing to perform his part of the agreement, it is necessary for the Court to consider the conduct of the plaintiff prior and subsequent to the filing of the suit for specific performance.

46. Taking into consideration the oral as well as documentary evidence placed on record, this Court has no hesitation in holding that the plaintiff was ready and willing to perform his part of the agreement and after payment of a part of sale consideration, this fact was averred in the plaint and legal notice and the plaintiff's readiness has been demonstrated in his evidence. Therefore, the contention of the learned senior counsel for the appellant/defendant that the plaintiff has failed to plead and prove his readiness and willingness is rejected.

47. As far as the contention of learned senior counsel for the appellant that the execution of agreement Ext. PW-1/A has not been proved is concerned, it cannot be accepted especially in view of the concession as made by the learned counsel for the appellant before the learned Additional District Judge, Sundernagar. In para-18 of the impugned judgment, it was noted by the learned Additional District Judge that the counsel for the appellant fairly conceded that the execution of agreement Ext. PW-1/A has been proved on record. Therefore, in view of the concession, as made by learned counsel before the learned first appellate Court, now this plea is not available to the appellant before this Court.

48. The learned senior counsel for the appellant has raised another contention that since the agreement to sell was unregistered, the decree for specific performance of agreement could not have been passed in favour of the plaintiff. To his this submission, it will be apt to reproduce the relevant provisions of Section 49 of the Registration Act read as follows:

> *"49. Effect of non-registration of documents required to be registered.-*
>
> *No document required by section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall*
>
> *(a)affect any immovable property comprised therein, or*
>
> *(b)confer any power to adopt, or*
>
> *(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:[Provided that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877[3 of 1877] or as evidence of any collateral transaction not required to be effected by registered instrument."*

49. To rebut the contention of appellant, the learned Senior Counsel for the respondent has relied on the judgment of the Hon'ble Supreme Court in ***S. Kaladevi*** *vs.* ***V.R. Somasundaram and others (2010) 5 SCC 401***, the relevant paras whereof read as under:

"10. Section 17 of 1908 Act is a disabling section. The documents defined in clauses (a) to (e) therein require registration compulsorily. Accordingly, sale of immovable property of the value of Rs. 100/- and more requires compulsory registration. Part X of the 1908 Act deals with the effects of registration and non-registration.

11. Section 49 gives teeth to Section 17 by providing effect of non-registration of documents required to be registered. Section 49 reads thus:

> *"S.49.- Effect of non-registration of documents required to be registered.- No document required by section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall-*
> *(a) affect any immovable property comprised therein, or*
> *(b) confer any power to adopt, or*
> *(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:*
> *Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument."*

12. The main provision in Section 49 provides that any document which is required to be registered, if not registered, shall not affect any immovable property comprised therein nor such document shall be received as evidence of any transaction affecting such property. Proviso, however, would show that an unregistered document affecting immovable property and required by 1908 Act or the Transfer of Property Act, 1882 to be registered may be received as an evidence to the contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument. By virtue of proviso, therefore, an unregistered sale deed of an immovable property of the value of Rs. 100/- and more could be admitted in evidence as evidence of a contract in a suit for specific performance of the contract. Such an unregistered sale deed can also be admitted in evidence as an evidence of any collateral transaction not required to be effected by registered document. When an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of 1908 Act.

13. Recently in the case of K.B. Saha and Sons Private Limited v. Development Consultant Limited (2008) 8 SCC 564, this Court *noticed the following statement of Mulla in his Indian Registration Act, 7th Edition, at page 189:-*

> *"......The High Courts of Calcutta, Bombay, Allahabad, Madras, Patna, Lahore, Assam, Nagpur, Pepsu, Rajasthan, Orissa, Rangoon and Jammu & Kashmir; the former Chief Court of Oudh; the Judicial Commissioner's Court at Peshawar, Ajmer and Himachal Pradesh and the Supreme Court have held that a document which requires registration under Section 17 and which is not admissible for want of registration to prove a gift or mortgage or sale or lease is nevertheless admissible to prove the character of the possession of the person who holds under it......"*

This Court then culled out the following principles:-

> *"1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.*
> *2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.*
> *3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.*
> *4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.*
> *5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose."*

To the aforesaid principles, one more principle may be added, namely, that a document required to be registered, if unregistered, can be admitted in evidence as evidence of a contract in a suit for specific performance."

50. To the similar extent, the Hon'ble Supreme Court in ***Ameer Minhaj*** *vs.* ***Dierdre Elizabeth (Wright) Issar and others (2018) 7 SCC 639*** has held as follows:

> *"10. On a plain reading of this provision, it is amply clear that the document containing contract to transfer the right, title or*

interest in an immovable property for consideration is required to be registered, if the party wants to rely on the same for the purposes of Section 53A of the 1882 Act to protect its possession over the stated property. If it is not a registered document, the only consequence provided in this provision is to declare that such document shall have no effect for the purposes of the said Section 53A of the 1882 Act. The issue, in our opinion, is no more res integra. In S. Kaladevi Vs. V.R. Somasundaram and Ors., this Court has restated the legal position that when an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received as evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of the 1908 Act."

51. Further, in ***Civil Appeal No. 6543 of 2025*** in case titled ***Muruganandam vs. Muniyandi (died)*** through legal heirs, decided on 08.05.2025 while dealing with the similar proposition, the Hon'ble Apex court has held as follows:

"9. Having considered the matter in detail, we are of the opinion that the prayer of the appellant in the interlocutory application falls under proviso to Section 49 of the Registration Act which provides that an unregistered document affecting immovable property may be received as evidence of a contract in a suit for specific performance. The proviso also enables the said document to be received in evidence of a collateral transaction. Section 49 reads as follows:

"49. Effect of non-registration of documents required to be registered.—No document required by section 17 [or by any provision of the Transfer of Property Act, 1882, to be registered shall— (a) affect any immovable property comprised therein, or (b) confer any power to adopt, or (c) be received as evidence of any transaction affecting such

> *property or conferring such power, unless it has been registered:*
>
> *Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 or as evidence of any collateral transaction not required to be effected by registered instrument."*

52. Therefore, as per the exposition of law, as laid down by the Hon'ble Apex Court, an unregistered document affecting immovable property and required by 1908 Act or the Transfer of Property Act, 1882 to be registered may be received as an evidence to the contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument. By virtue of proviso, therefore, an unregistered sale deed of an immovable property of the value of Rs. 100/- and more could be admitted in evidence as evidence of a contract in a suit for specific performance of the contract. Such an unregistered sale deed can also be admitted in evidence as an evidence of any collateral transaction not required to be effected by registered document. When an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of 1908 Act.

53. Therefore, the findings as returned by the learned First Appellate Court while relying upon the proviso of Section 49 of the Registration Act that the unregistered agreement to sell is admissible in evidence in a suit for specific performance is strictly in accordance with law. The learned first Appellate Court while dealing with the point rightly came to the conclusion that the agreement to sell is required to be registered for the applicability of the doctrine of part performance under Section 53-A of 1882 Act and there is no bar for the specific performance of an unregistered document.

54. Even otherwise, this Court is conscious of the fact that there are concurrent findings of fact as recorded by the learned trial Court as well as the learned first appellate Court on readiness and willingness on the part of the plaintiff, which were based on appreciation of evidence on record. This Court, in exercise of its powers under Section 100 of CPC, cannot interfere with such findings of fact unless such findings are found to be perverse. Having gone through the findings as returned by the learned trial Court and the learned first appellate Court on readiness and willingness on the part of the plaintiff, this Court is of the considered opinion that said findings cannot be said to be perverse or contrary to the evidence on record.

55. The Hon'ble Supreme Court in ***Navaneethammal vs. Arjuna Chetty AIR 1996 SC 3521***, has enumerated the scope of Section 100 of CPC, which reads as under:

> *"10. This Court, time without number, pointed out that interference with the concurrent findings of the courts below by the High Court under Section 100 CPC must be avoided unless warranted by compelling reasons. In any case, the High Court is not expected to re-appreciating the evidence just to replace the findings for the lower courts.*
>
> *20. In our considered view the lower Appellate Court has fairly appreciated the evidence in the above background and has reached the conclusion that the suit was not barred by Limitation. Even assuming that another view is possible on a re-appreciation of the same evidence, that should not have been done by the High Court as it cannot be said that the view taken by the First Appellate Court was based on no material."*

56. Similarly, the Hon'ble Apex Court in ***Kshitish Chandra Purkait vs. Santosh Kumar Purkait and others (1997) 5 SCC 438*** has held as under:

> *"10. We would only add that (a) it is the duty cast upon the High Court to formulate the substantial question of law involved in the case even at the initial stage; and (b) that in (exceptional) cases, at a later point of time, when the Court exercises its jurisdiction under the proviso to sub-section (5) of Section 100 C.P.C in formulating the substantial question of law, the opposite party should be put on notice thereon and should be given a fair or proper opportunity to meet the point. Proceeding to hear the appeal without formulating the substantial question of law involved in the appeal is illegal and is an abnegation or abdication of the duty cast on Court; and even after the formulation of the substantial question of law, if a fair or proper opportunity is not afforded to the opposite side, it will amount to denial of natural justice. The above parameters within which the High Court has to exercise its*

> *jurisdiction under Section 100 CPC should always be borne in mind. We are sorry to state that the above aspects are seldom borne in mind in many cases and second appeals are entertained and/or disposed of, without conforming to the above discipline.*
>
> *11. The guidelines to determine as to what is a "substantial question of law" within the meaning of Section 100 CPC, have been laid down by this Court in a Constitution Bench decision in Chunilal V. Mehta and Sons Ltd. v. Century Spg. and Mfg. Co. Ltd There is also a later decision of this Court in Mahindra and Mahindra Ltd. v. Union of India3. It is unnecessary to deal at length with that aspect any further."*

57. In ***Kondiba Dagadu Kadam vs. Savitribai Sopan Gujar and others, AIR 1999 SC 2213***, the Hon'ble Supreme Court has held as under:

> *"5. 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 are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate Court unless 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 without evidence."

58. In ***Naresh and others vs. Hemant and others, (2022) 18 SCC 802***, the Hon'ble Supreme Court held as under:

"10.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 PW-1 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.

2. 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.

12.In Madamanchi Ramappa v. 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."*

13.Though precedents abound on this settled principle of law, we do not consider it necessary to burden our discussion unnecessarily except to rely further on Gurdev Kaur v. Kaki, (2007) 1 SCC 546, holding as follows:

> *"71. The fact that, in a series of cases, this Court was compelled to interfere was because the true legislative intendment and scope of Section 100 CPC have neither been appreciated nor applied. A class of judges while administering law honestly believe that, if they are satisfied that, in any second appeal brought before them evidence has been grossly misappreciated either by the lower appellate court or by both the courts below, it is their duty to interfere, because they seem to feel that a decree following upon a gross misappreciation of evidence involves injustice and it is the duty of the High Court to redress such injustice. We would like to reiterate that the justice has to be administered in accordance with law.*
>
> *xxxx*
>
> *73. The Judicial Committee of the Privy Council as early as in 1890 stated that there is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however gross or inexcusable the error may seem to be, and they added a note of warning that no court in India has power to add to, or enlarge, the grounds specified in Section 100.*

xxxx

81. Despite repeated declarations of law by the judgments of this Court and the Privy Council for over a century, still the scope of Section 100 has not been correctly appreciated and applied by the High Courts in a large number of cases. In the facts and circumstances of this case the High Court interfered with the pure findings of fact even after the amendment of Section 100 CPC in 1976. The High Court would not have been justified in interfering with the concurrent findings of fact in this case even prior to the amendment of Section 100 CPC. The judgment of the High Court is clearly against the provisions of Section 100 and in no uncertain terms clearly violates the legislative intention.

82. In view of the clear legislative mandate crystallised by a series of judgments of the Privy Council and this Court ranging from 1890 to 2006, the High Court in law could not have interfered with pure findings of facts arrived at by the courts below. Consequently, the impugned judgment is set aside and this appeal is allowed with costs."

*14**.**The order of the High Court interfering with concurrent findings of facts by two courts is, therefore, held to be unsustainable in exercise of the powers under Section 100 of the Civil Procedure Code. The order of the High Court is consequently set aside. The orders dated 06.03.1998 and 13.06.2002 of the Trial Court and the First Appellate Court are restored. The suit of the plaintiffs is dismissed. The present appeal is allowed."*

59. In ***Brij Narayan Shukla (dead) through legal representatives vs. Sudesh Kumar Alias Suresh Kumar (dead)***

through Legal Representatives and others, (2024) 2 SCC 590, the Hon'ble Supreme Court held as under:

> *"10.2 The High Court was hearing the Second Appeal under section 100 of Code of Civil Procedure, 1908 and it having reappreciated the findings to disturb findings of fact, committed an error."*

60. In ***Civil Apepal No.5131 of 2025,*** titled as ***R. Nagaraj (dead) through LRs and another vs. Rajmani and others***, the Hon'ble Supreme Court held as under:

> *"7. By the impugned judgment and order and without answering anything on the substantial questions of law framed/formulated, absolutely in a casual manner, the High Court has allowed the Second Appeal and has set aside the concurrent findings recorded by both the courts below and thereafter has remanded the matter to the learned trial Court permitting the original plaintiff to amend the plaint and pray for fixation of the boundary.*
>
> *9. Having heard learned counsel for the respective parties and having gone through the impugned judgment and order passed by the High Court, we are constrained to observe that the manner in which the High Court has dealt with the Second Appeal under Section 100 of the CPC is not appreciable at all. From the impugned judgment and order passed by the High Court, it appears that the High Court has exercised the powers as if the High Court was deciding the Writ Petition under Article 226 of the Constitution of India. The High Court has not appreciated at all that the High Court was deciding the Second Appeal under Section 100 of the CPC and that too against the concurrent findings of fact by both the courts below, which were, as such, on appreciation of evidence on record.*

> *Under the circumstances, the impugned judgment and order passed by the High Court is unsustainable.11. At the cost of repetition, it is observed that the High Court was dealing with the Second Appeal under Section 100 CPC and the concurrent findings recorded by both the courts below which were on appreciation of evidence on record. Neither at the stage of deciding the suit nor even before the first Appellate Court even such a prayer was made to amend the plaint, which is now permitted by the High Court, despite the fact that earlier in the suit during the course of trial, the plaint was amended. Under the circumstances also, the impugned judgment and order passed by the High Court is unsustainable."*

61. The learned Courts below have taken into consideration the oral as well as documentary evidence placed on record and rightly decreed the suit as filed by the plaintiff for specific performance of agreement to sell. The learned Courts below have not committed any error and the same is not an outcome of any illegality or jurisdictional error.

62. No other point urged by the learned counsel for the parties.

63. The substantial questions of law are answered accordingly.

64. In view of above discussions, the present appeal being devoid of any merit is dismissed. Pending applications, if any, also stand disposed of.

65. It is contended by learned senior counsel for the respondent that the decree as passed by the learned trial Court does not specify the time for the execution of sale deed, therefore, time bound direction be issued to do the same.

66. Consequently, the respondent is directed to pay the remaining sale amount along with interest at the rate of 6% per annum from the date of passing of judgment by the learned trial Court to the appellant/defendant within eight weeks from today and thereafter the appellant to execute the sale deed in favour of the respondent within further four weeks.

(Romesh Verma)
Judge

14th July, 2026
(vt)