IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 18th OF JANUARY, 2023

SECOND APPEAL No. 2703 of 2022

BETWEEN:-

1. **RAGHUVEER NAYAK S/O LATE SHRI GYASHI NAYAK, AGED ABOUT 35 YEARS, R/O VILLAGE KHAROHI, TEHSIL RAJNAGAR, DISTRICT CHHATARPUR (MADHYA PRADESH)**
2. **BABULAL NAYAK S/O LATE SHRI GYANSHI NAYAK, AGED ABOUT 33 YEARS, R/O VILLAGE KHAROHI, TEHSIL RAJNAGAR, DISTRICT CHHATARPUR (MADHYA PRADESH)**
3. **THAKURDAS NAYAK S/O LATE SHRI GYASHI NAYAK, AGED ABOUT 30 YEARS, R/O VILLAGE KHAROHI, TEHSIL RAJNAGAR, DISTRICT CHHATARPUR (MADHYA PRADESH)**
4. **SMT. SAVITRI NAYAK W/O LATE SHRI GYASHI NAYAK, AGED ABOUT 70 YEARS, R/O VILLAGE KHAROHI, TEHSIL RAJNAGAR, DISTRICT CHHATARPUR (MADHYA PRADESH)**
5. **SHAMBHUDAYAL NAYAK S/O SHRI CHINGE NAYAK, AGED ABOUT 55 YEARS, R/O VILLAGE NAGRA TEHSIL GAROTA DISTRICT JHANSHI AT PRESENT VILLAGE KHAROHI TEHSIL RAJNAGAR DISTRICT CHHATARPUR (MADHYA PRADESH)**

.....APPELLANTS

(BY SHRI SHREYASH PANDIT - ADVOCATE)

AND

1. **NATTURAM @ NATTU S/O LATE SHRI RAJJU NAYAK, AGED ABOUT 55 YEARS, R/O VILLAGE KHAROHI, TEHSIL RAJNAGAR, DISTRICT CHHATARPUR (MADHYA PRADESH)**

2. **SMT JANKA D/O LATE SHRI RAJJU NAYAK, AGED ABOUT 62 YEARS, R/O VILLAGE SINONIYA TEHSIL PRATVIPUR DISTRICT TIKAMGARH (MADHYA PRADESH)**

3. **SMT. LADKUWAR D/O LATE SHRI RAJJU NAYAK, AGED ABOUT 58 YEARS, R/O VILLAGE RAMNAGAR TEHSIL NIWARI DISTRICT TIKAMGARH (MADHYA PRADESH)**

4. **SMT. HALKIBAI D/O LATE SHRI RAJJU NAYAK, AGED ABOUT 56 YEARS, R/O VILLAGE NAGRA TEHSIL GAROTA DISTRICT JHANSHI (UTTAR PRADESH)**

5. **SMT. SAGANA D/O LATE SHRI GYASI NAYAK, AGED ABOUT 39 YEARS, R/O VILLAGE NAGRA TEHSIL GAROTA DISTRICT JHANSHI (UTTAR PRADESH)**

6. **SMT. PREMBAI W/O LATE SHRI HARDAYAL NAYAK, AGED ABOUT 60 YEARS, R/O VILLAGE KHAROHI, TEHSIL RAJNAGAR, DISTRICT CHHATARPUR (MADHYA PRADESH)**

7. **SMT. SUNDARBAI D/O SHRI MANGAL NAYAK, AGED ABOUT 75 YEARS, R/O VILLAGE NAGRA TEHSIL GAROTA DISTRICT JHANSHI (UTTAR PRADESH)**

8. **STATE OF M.P. THROUGH COLLECTOR DISTRICT CHHATARPUR (MADHYA PRADESH)**

9. **SMT. HARWATI D/O LATE SHRI GYASHI NAYAK, AGED ABOUT 45 YEARS, R/O VILLAGE KHAROHI TEHSIL RAJNAGAR**

DISTRICT CHHATARPUR (MADHYA PRADESH)

.....RESPONDENTS

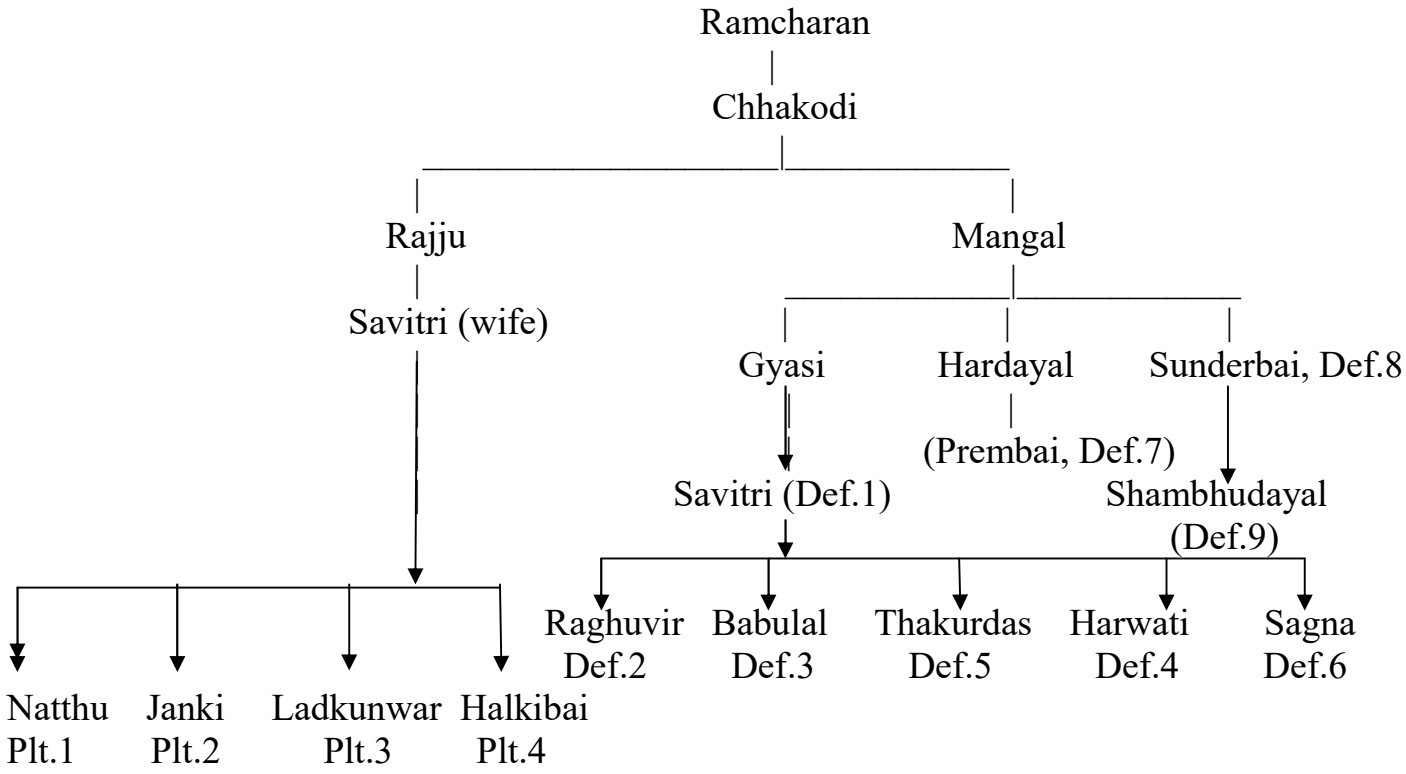
(NONE FOR THE RESPONDENTS)

This appeal coming on for admission this day, the court passed the following:

JUDGMENT

This second appeal under section 100 CPC has been filed against the judgment and decree dated 14.11.2022 passed by V District Judge, Chhattarpur in Regular Civil Appeal No.67-A/2017 arising out the judgment and decree dated 13.7.2017 passed by II Civil Judge Class II, Rajnagar, district Chhattarpur in R.C.S.No.11-A/2014.

2. Present appeal has been filed by the defendants. Respondents no.1 to 4 are the plaintiffs. According to the plaintiffs, the family tree is as under :-



3. It is the case of the plaintiffs that Gyasi and Hardayal were the real brothers being sons of Mangal, i.e. uncle of plaintiffs and were residing jointly. Rajju, father of the plaintiffs resided jointly with his brother Mangal and after the death of Rajju, his wife namely Smt.Savitri as well as plaintiffs also resided jointly with their uncle Mangal. No partition had taken place during the lifetime of Rajju with his brother Mangal. All the properties which were in the ownership and possession of Rajju and Mangal were their ancestral properties having inherited the same from their father Chhikodi. Only one agricultural field bearing Khasra No.2490/1 area 1.25 decimal situated in village Kharrohi was the joint property of Rajju and Mangal. Rajju and Mangal had inherited Khasra No.633 to 2501 total area 13.99 acres situated in village Kharrohi Pargana Ragouli which was owned and in possession of Chhikodi, s/o Ramcharan Brahman and the said land remained mutated in the name of Ramcharan during his lifetime. Chhikodi expired about 60 years back and thereafter in Samvat 2012 the names of Mangal and Rajju were jointly recorded as his legal representatives and successors of Chhikodi. During the lifetime of Rajju, the lands in question remained joint and no partition had ever taken place. Thus, it is the case of the plaintiff that all the above mentioned lands are joint and ancestral property and Mangal and Rajju had equal share in the same.

4. It was further pleaded that apart from the above mentioned lands, Khasra No.2490/1 area 1.25 decimal was also jointly recorded in the name of Mangal as well as Rajju. Accordingly, it was prayed that the plaintiff has one half share in Khasra No.2490/1 whereas his uncle has one half share. It was pleaded that the total area of lands mentioned

above was 30.02 acres and accordingly, Mangal and Rajju had one half share, i.e. 15.01 acres each. After the death of Mangal and Rajju, the names of Natthu, plaintiff no.1 and Halkibau, widow of Rajju were mutated and after the death of Mangal, names of his son Gyasi and Hardayal were mutated. After the death of widow of Rajju it was claimed that the plaintiff no.1 is entitled for 15.01 acres of land being the Bhumiswami and in possession.

5. An application for partition was filed by Gyasi and defendant no.9 Shambhudayal for partition before Tahsildar Rajnagar on 6.8.2011 which was registered as Case No.10/A-27/11-12 in respect of lands mentioned in paragraph 8 of the plaint. The plaintiff came to know about the pendency of the said application, therefore, he appeared in the said proceedings and raised a title dispute and accordingly Tahsildar Rajnagar has directed to approach the civil court and has now fixed the case for 19.6.2012 and accordingly it was claimed that the plaintiffs have been compelled to file the present civil suit. An application was filed on 7.10.2011 for obtaining the certified copies of the land in dispute from 1943-44 to 1988-89 which were received on 24.10.2011. Similarly, the certified copies of the documents pertaining to Khasra No.2490/1 were received on 13.3.2012. The plaintiffs after obtaining the certified copy came to know that without any information to Rajju, the names of plaintiffs and his mother have been deleted whereas the plaintiff is entitled for one half share in the survey no.683/2, 684, 779 and 2490/1 area 8.280 acres. It was further claimed that the dispute relates to Khasra No.2490/1, area 1.25 acres, Khasra No.683/2 area 5.35 acres, Khasra No.684 area 1.96 acres, Khasra No.779 area 9.43 acres only in which

plaintiff has one half share. It was further claimed that there is no dispute with regard to Khasra No.633, 683, 684, 779, 1082, 1088, 1089, 1090, 1091, 1092, 1274, 1275, 1279, 1280 and 2501/2. It was further claimed that Rajju and Mangal were the joint owner of Khasra No.2490/1 and subsequently name of Rajju was deleted without there being any order in that regard. The mutation of name of Mangal in Khasra No.683/2 is a forged entry after getting the name of Rajju deleted in an illegal manner. Accordingly, it was claimed that Rajju also had one half share in Khasra No.683/2. It was prayed that all the revenue entries in which the name of Mangal was recorded as owner are bad in law and null and void. Further the mutation of name of Hardayal along with Gyasi in Khasra of 1989-90 to 1993-94 is a forged entry and Rajju had never alienated his share to Hardayal and the land was in the joint ownership of Mangal and Rajju only. Similarly, in respect of Khasra No.1082 to Khasra No.1280 it was further claimed that the sale of one fourth share by Hardayal to Shambhudayal is undisputed. The sale transaction in respect of Khasra No.683/2, 684, 779, 2490/1 by Hardayal in favour of defendant no.9 Shambhudayal is void because Hardayal had only a share to the extent of one fourth but alienation to the extent of one half share is invalid. It was further claimed that Hardayal had one fourth share in Khasra No.683/2, 779, 2490/1, however, he has executed a sale-deed in favour of defendant no.9 by registered sale-deed dated 18.12.2003 by projecting his share as one half and thus said sale-deed is bad and, therefore, the sale-deed dated 18.12.2003 in excess of share of Hardayal is bad. Accordingly, the suit was filed for declaration that Khasra No.683/2, 779, 684 and 2490/1 total area 17.99 acres situated in village Kharrohi is joint property of Rajju and Mangal and, therefore, legal representatives of Mangal have one half

share and plaintiff being legal representatives of Rajju had one half share each.

6. The defendants No.1, 2, 3, 5 and 9 filed their written statements and claimed that incomplete family tree has been disclosed. The plaintiffs have not disclosed the names of sisters of Gyasi and Hardayal as well as the daughters of Gyasi as well as their legal representatives. Rajju and Mangal had separated during their life time. The plaintiffs never resided jointly with Mangal. The disputed lands, i.e. 683/2, 779, 2490/1 were never recorded in the name of Chhikodi, therefore the said lands are not ancestral lands and plaintiff has no right and title on the same. After the death of Rajju, the mutation order was passed in the year 1986-87 and the plaintiff was aware of the same and accordingly, it was claimed that the defendants No.2 to 5 who are legal representatives of Mangal are the owner and in possession of the same. It was further claimed that the sale deed executed by defendant No.9 on 18/12/2003 is valid and is in accordance with law. Rajju had never claimed his title over the land in dispute. Rajju was residing separately from Mangal and was in possession of separate lands. Rajju was a party to the mutation proceedings and in spite of the fact that the plaintiff and Rajju were aware of the mutation in the name of Mangal, they did not challenge the order dated 29/09/1987. The suit has been filed after 37 years, therefore it is barred by limitation. Rajju has also expired about 28 years back. The plaintiff and his father were never in possession of the land in dispute. The husband of the defendant No.7, namely, Hardayal has executed a sale-deed dated 22/11/2003 in favour of the defendant No.9 and the plaintiffs were also aware of the mutation of the name of purchaser. Thus, it was clear that the Hardayal had one half share in khasra

No.683/2, 779, 2490/1 and therefore he has also executed a sale deed in favour of defendant No.9 for a consideration amount of Rupees Three Lacs by registered sale deed dated 18/12/2003. Since the suit has been filed after nine years of sale deed, therefore the same is barred by limitation.

7. The Trial Court after framing the issues and recording the evidence of the parties decreed the suit by holding that the plaintiffs have one half share in khasra No.683/2, 684, 779 and 2490/1 total area 7.280 hectares situated in Village Kharrohi, Tehsil Rajnagar, District Chhatarpur and the mutation done in respect of the share of plaintiffs is null and void. Similarly, the sale deed dated 18/12/2003 executed by the defendant Hardayal in favour of the defendant No.9 – Shambhudayal was also held to be null and void to the extent of share of the plaintiff.

8. Being aggrieved by the judgment and decree passed by the Trial Court, appellant preferred an appeal which too has been dismissed by judgment and decree dated 14/11/2022 passed by Fifth Additional District Judge in RCA No.67A/2017.

9. Challenging the judgment and decree passed by the Courts below, it is submitted by the counsel for the appellants that the Courts below have merely relied upon the mutation entries which were jointly in the names of Mangal and Rajju to hold that the property belonged to Chhikodi which was inherited jointly by Rajju and Mangal. It is further submitted that the plaintiffs have failed to prove that the lands in dispute were ancestral properties of the parties entitling them a share in the same. It is further submitted that in the earlier partition proceedings, initiated by the plaintiffs, the suit lands were not included by them and no share was claimed by them in the lands in dispute therefore, the Courts below

should not have held that the properties in dispute are the joint Hindu family property and proposed the following substantial question of law :-

i) Whether in absence of any pleading regarding source of acquisition of the suit lands by Rajju, the Courts below were justified in holding that Mangal and Rajju. Were joint owner of the suit lands and defendant's ancestor Mangal was not the exclusive owner of the same ?

ii) Whether the Courts below were justifying in holding that Chhakodi was the erstwhile owner of the suit lands and after his death Mangal and Rajju became the joint owners of the same, merely relying upon the mutation entries in the revenue record ?

iii) Whether the plaintiffs have satisfactorily discharged their burden to prove that the suit lands were the ancesteral lands of the parties entitling them for a share there in more particularly in view of the fact that the defendants are in possession and exclusively recorded over the suit lands ?

iv) Whether in view of the fact that in earlier partition proceedings initiated by the plaintiffs, the suit lands were not included by them and no share was claimed by them in the suit lands, the Courts below were still justified in holding that the plaintiffs are having share in the suit lands?

v) Whether, not claiming a share in the suit lands in earlier partition proceedings amounts to acquiesce on the part of the plaintiffs that they don't have any right over the suit lands and thus they are stopped from claiming any share on it in the present suit?

vi) Whether the suit filed by the plaintiff is barred by limitation?

vii) Whether in view of the admission of plaintiff that defendant No.9 is in possession of the suit lands, the Courts below were justified in holding defendants are in possession of their 1/2 share in the suit lands ?

viii) Whether the lower Appellate Court committed a gross mistake in rejecting the defendants application under Order 41 Rule 27 of the CPC for taking additional evidence on record?

10. Heard the learned counsel for the appellants.

11. The plaintiff has filed the Khasra Panchshala of Village Kharrohi of the year 1943-44 in which the lands in dispute were recorded in the name of Chhakodi. Thereafter, the plaintiff has filed the Khasra Panchshala of Samvat 2012 according to which the names of Mangal and Rajju were jointly recorded. Thus, it is clear that the lands in dispute originally belonged to Chhikodi and after his death, names of Mangal and Rajju were jointly recorded which is evident from Khasra Panchshala Ex-P/3, P/4, P/5, P/6, P/7. Thereafter, it is clear from Khasra Panchshala of the year 1986-86, Ex-P/7, that after the death of Rajju, name of his widow as well as the plaintiff Natthu were recorded. From the Khasra Panchshala of 1991, Ex-P/8, it is clear that the name of Gyasi / Hardayal, sons of Mangal and plaintiff Natthu, son of Rajju and Halki, widow of Rajju were recorded as having half share in the property. Similarly, it is clear from the Khasra Panchshala of 1994-95 to 1998-99 that the names of the plaintiffs were also recorded. Thus, it is clear that the property in dispute belonged to Chhikodi which was inherited by Rajju and Mangal and thus the Courts below did not commit any mistake by holding that the land in dispute is an ancestral property of Mangal and Rajju, as a result both had half share in the land in dispute.

12. It is well established principle of law that so long as the property remains joint, the burden to prove partition is on the person who claims that the said property was partitioned. Even otherwise, it is well

established principle of law that unless and until the joint Hindu family property is partitioned, every co-sharer will have equal share and by way of legal fiction he will treated to be in possession of every inch of the said property.

13. Both the Courts below have given concurrent findings of fact that the properties in dispute were the ancestral properties of Rajju and Mangal. The counsel for the appellants could not point out any perversity in the same. Even the counsel for the appellants could not point out as to how the properties in dispute can be said to be self-acquired properties of the Mangal or the defendants. There is nothing on record that the properties in dispute were ever partitioned between Mangal and Rajju or between the legal representatives of Mangal and Rajju.

14. It is well established principle of law that this Court in exercise of powers under Section 100 CPC cannot interfere with the findings of fact even if they are erroneous.

15. The Supreme Court in the case of **Union of India Vs. Ibrahim Uddin and Another, (2012) 8 SCC 148** has held as under:-

> **"59.** Section 100 CPC provides for a second appeal only on the substantial question of law. Generally, a second appeal does not lie on question of facts or of law. In *SBI* v. *S.N. Goyal*, (2008) 8 SCC 92 : (2008) 2 SCC (L&S) 678, this Court explained the terms "substantial question of law" and observed as under : (SCC p. 103, para 13)
>
> > "*13*. … The word 'substantial' prefixed to 'question of law' does not refer to the stakes involved in the case, nor intended to refer only to

> questions of law of general importance, but refers to impact or *effect of the question of law on the decision in the lis between the parties*. 'Substantial questions of law' means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the parties. … any *question of law which affects the final decision in a case is a substantial question of law as between the parties*. A question of law which arises incidentally or collaterally, having no bearing on the final outcome, will not be a substantial question of law. … There cannot, therefore, be a straitjacket definition as to when a substantial question of law arises in a case."

60. Similarly, in *Chunilal V. Mehta & Sons Ltd.* v. *Century Spg. and Mfg. Co. Ltd.* [AIR 1962 SC 1314], this Court for the purpose of determining the issue held : (AIR p. 1318, para 6)

> "*6*. … The proper test for determining whether a question of law raises in the case is substantial, would, in our opinion, be whether it is of general public importance or *whether it directly and substantially affects the rights of the parties*…."

61. In *Vijay Kumar Talwar* v. *CIT* [(2011) 1 SCC 673 : (2011) 1 SCC (Civ) 323] this Court held that : (SCC pp. 679-80, para 21)

> "*21*. … '*14*. A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of law. To be 'substantial' a question of law must

> be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law 'involving in the case' there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. … It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one … or not; the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis.

(See also *Rajeshwari* v. *Puran Indoria* [(2005) 7 SCC 60])

62. The Court, for the reasons to be recorded, may also entertain a second appeal even on any other substantial question of law, not formulated by it, if the Court is satisfied that the case involves such a question. Therefore, the existence of a substantial question of law is a sine qua non for the exercise of jurisdiction under the provisions of Section 100 CPC. The second appeal does not lie on the ground of erroneous findings of facts based on appreciation of the relevant evidence.

63. There may be a question, which may be a "question of fact", "question of law", "mixed question of fact and law" and "substantial question of law". Question means anything inquired; an issue to be decided. The "question of fact" is whether a particular factual situation exists or not. A question of fact, in the realm of jurisprudence, has been explained as under:

> "A question of fact is one capable of being answered by way of demonstration. A question of opinion is one that cannot be so answered. An answer to it is a matter of speculation which cannot be proved by any available evidence to be right or wrong."

(Vide *Salmond on Jurisprudence*, 12th Edn., p. 69, cited in *Gadakh Yashwantrao Kankarrao* v. *Balasaheb Vikhe Patil* [(1994) 1 SCC 682 : AIR 1994 SC 678] , SCC p. 705, para 34.)

64. In *Bibhabati Devi* v. *Kumar Ramendra Narayan Roy* [(1945-46) 73 IA 246 : AIR 1947 PC 19], the Privy Council has provided the guidelines as in what cases the second appeal can be entertained, explaining the provisions existing prior to the amendment of 1976, observing as under : (IA p. 259)

> "(*4*) … That miscarriage of justice means such a departure from the rules which permeate all judicial procedure as to make that which happened not in the proper sense of the word 'judicial procedure' at all. That the violation of some principle of law or procedure must be such an erroneous proposition of law that if that proposition be corrected the finding cannot stand; or it may be the neglect

> of some principle of law or procedure, whose application will have the same effect. The question whether there is evidence on which the courts could arrive at their finding is such a question of law.
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> (*5*) That the question of admissibility of evidence is a proposition of law, but it must be such as to affect materially the finding. The question of the value of evidence is not a sufficient reason for departure from the practice."

65. In *Suwalal Chhogalal* v. *CIT* [(1949) 17 ITR 269 (Nag)] the Court held as under : (ITR p. 277)

> "… A fact is a fact irrespective of evidence by which it is proved. The only time a question of law can arise in such a case is when it is alleged that there is no material on which the conclusion can be based or no sufficient material."

66. In *Oriental Investment Co. Ltd.* v. *CIT* [AIR 1957 SC 852] this Court considered a large number of its earlier judgments, including *Sree Meenakshi Mills Ltd.* v. *CIT* [AIR 1957 SC 49] and held that where the question of decision is whether certain profit is made and shown in the name of certain intermediaries, were, in fact, profit actually earned by the assessee or the intermediaries, is a mixed question of fact and law. The Court further held that : (*Oriental Investment case* [AIR 1957 SC 852], AIR p. 856, para 29)

> "*29*. … inference from facts would be a question of fact or of law according as the point for determination is one of pure fact or a 'mixed question of law and fact' and that a finding of

> fact without evidence to support it or if based on relevant and irrelevant matters is not unassailable."

67. There is no prohibition to entertain a second appeal even on question of fact provided the Court is satisfied that the findings of the courts below were vitiated by non-consideration of relevant evidence or by showing erroneous approach to the matter and findings recorded in the court below are perverse. [Vide *Jagdish Singh* v. *Natthu Singh* [(1992) 1 SCC 647 : AIR 1992 SC 1604], *Prativa Devi* v. *T.V. Krishnan* [(1996) 5 SCC 353], *Satya Gupta* v. *Brijesh Kumar* [(1998) 6 SCC 423], *Ragavendra Kumar* v. *Firm Prem Machinery & Co.* [(2000) 1 SCC 679 : AIR 2000 SC 534], *Molar Mal* v. *Kay Iron Works (P) Ltd.* [(2000) 4 SCC 285 : AIR 2000 SC 1261], *Bharatha Matha* v. *R. Vijaya Renganathan* [(2010) 11 SCC 483 : (2010) 4 SCC (Civ) 498] and *Dinesh Kumar* v. *Yusuf Ali* [(2010) 12 SCC 740 : (2010) 4 SCC (Civ) 738]]

68. In *Jai Singh* v. *Shakuntala* [(2002) 3 SCC 634 : AIR 2002 SC 1428] this Court held that (SCC p. 638, para 6) it is permissible to interfere even on *question of fact* but it may be only in

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

> Similar view has been taken in *Kashmir Singh* v. *Harnam Singh* [(2008) 12 SCC 796 : AIR 2008 SC 1749] .
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> **69.** Declaration of relief is always discretionary. If the discretion is not exercised by the lower court "in the spirit of the statute or fairly or honestly or according to the rules of reason and justice", the order passed by the lower court can be reversed by the superior court. (See *Mysore SRTC* v. *Mirja Khasim Ali Beg* [(1977) 2 SCC 457 : 1977 SCC (L&S) 282] , SCC p. 466, para 18.)
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> **70.** There may be exceptional circumstances where the High Court is compelled to interfere, notwithstanding the limitation imposed by the wording of Section 100 CPC. It may be necessary to do so for the reason that after all the purpose of the establishment of courts of justice is to render justice between the parties, though the High Court is bound to act with circumspection while exercising such jurisdiction. In second appeal the Court frames the substantial question of law at the time of admission of the appeal and the Court is required to answer all the said questions unless the appeal is finally decided on one or two of those questions or the Court comes to the conclusion that the question(s) framed could not be the substantial question(s) of law. There is no prohibition in law to frame the additional substantial question of law if the need so arises at the time of the final hearing of the appeal."

16. The Supreme Court in the case of **C. Doddanarayana Reddy (Dead) by Lrs. and Others V. C. Jayarama Reddy (dead) by Lrs. and Others, AIR 2020 SC 1912** has held as under:-

"25. The question as to whether a substantial question of law arises, has been a subject matter of interpretation by this Court. In the judgment reported as Karnataka Board of Wakf v. Anjuman-E- Ismail Madris-Un-Niswan, it was held that findings of the fact could not have been interfered within the second appeal. This Court held as under:

> "12. This Court had repeatedly held that the power of the High Court to interfere in second appeal under Section 100 CPC is limited solely to decide a substantial question of law, if at all the same arises in the case. It has deprecated the practice of the High Court routinely interfering in pure findings of fact reached by the courts below without coming to the conclusion that the said finding of fact is either perverse or not based on material on record.
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> 13. In Ramanuja Naidu v. V. Kanniah Naidu (1996 3 SCC 392: (AIR 1996 SC 3021)), this Court held:
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> "It is now well settled that concurrent findings of fact of trial court and first appellate court cannot be interfered with by the High Court in exercise of its jurisdiction under Section 100 of Civil Procedure Code. The Single Judge of the High Court totally misconceived his jurisdiction in deciding the second appeal under Section 100 of the Code in the way he did."
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> 14. In Navaneethammal v. Arjuna Chetty (1996 6 SCC 166): (AIR 1996 SC 3521), this Court held :

> "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 reappreciate the evidence just to re-place the findings of the lower courts. … Even assuming that another view is possible on a reappreciation 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."
> 15. And again in Secy., Taliparamba Education Society v. Moothedath Mallisseri Illath M.N. (1997 4 SCC 484), this Court held: (SCC p. 486: (AIROnline 1997 SC 17), para 5) "The High Court was grossly in error in trenching upon the appreciation of evidence under Section 100 CPC and recording reverse finding of fact which is impermissible."

17. The Supreme Court in the case of **Gurnam Singh (dead) by Legal Representatives and Others Vs. Lehna Singh (dead) by Legal Representatives, (2019) 7 SCC 641** has held as under:-

> "**13.** At the outset, it is required to be noted that the learned trial court held the will dated 17-1-1980, which was executed in favour of original Defendants 2 to 6, surrounded by suspicious circumstances and therefore did not believe the said will.
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> **13.1.** The suspicious circumstances which were considered by the learned trial court are

narrated/stated hereinabove. On reappreciation of evidence on record and after dealing with each alleged suspicious circumstance, which was dealt with by the learned trial court, the first appellate court by giving cogent reasons held the will genuine and consequently did not agree with the findings recorded by the learned trial court. However, in second appeal under Section 100 CPC, the High Court, by the impugned judgment and order has interfered with the judgment and decree passed by the first appellate court. While interfering with the judgment and order passed by the first appellate court, it appears that while upsetting the judgment and decree passed by the first appellate court, the High Court has again appreciated the entire evidence on record, which in exercise of powers under Section 100 CPC is not permissible. While passing the impugned judgment and order, it appears that the High Court has not at all appreciated the fact that the High Court was deciding the second appeal under Section 100 CPC and not first appeal under Section 96 CPC. As per the law laid down by this Court in a catena of decisions, the jurisdiction of the High Court to entertain second appeal under Section 100 CPC after the 1976 Amendment, is confined only when the second appeal involves a substantial question of law. The existence of "a substantial question of law" is a sine qua non for the exercise of the jurisdiction under Section 100 CPC. As observed and held by this Court in *Kondiba Dagadu Kadam*, (1999) 3 SCC 722, in a second appeal under Section 100 CPC, the High Court cannot substitute its own opinion for that of the first appellate court, unless it finds that the conclusions drawn by the lower court were erroneous being:

(*i*) Contrary to the mandatory provisions of the applicable law;

OR

> (*ii*) Contrary to the law as pronounced by the Supreme Court;
>
> OR
>
> (*iii*) Based on inadmissible evidence or no evidence.

It is further observed by this Court in the aforesaid decision that if the first appellate court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in second appeal. It is further observed that the trial court could have decided differently is not a question of law justifying interference in second appeal.

16. In the aforesaid decision, this Court has observed and held as under: (*Madamanchi Ramappa,* AIR 1963 SC 1633 , AIR pp. 1637-38, para 12)

> "*12*. … whenever this Court is satisfied that in dealing with a second appeal, the High Court has, either unwittingly and in a casual manner, or deliberately as in this case, contravened the limits prescribed by Section 100, it becomes the duty of this Court to intervene and give effect to the said provisions. It may be that in some cases, the High Court dealing with the second appeal is inclined to take the view that what it regards to be justice or equity of the case has not been served by the findings of fact recorded by courts of fact; but on such occasions it is necessary to remember that what is administered in courts is justice according to law and considerations of fair play and equity however important they may be, must yield to clear and express provisions

> of the law. If in reaching its decisions in second appeals, the High Court contravenes the express provisions of Section 100, it would inevitably introduce in such decisions an element of disconcerting unpredictability which is usually associated with gambling; and that is a reproach which judicial process must constantly and scrupulously endeavour to avoid."
>
> 19. Before parting with the present judgment, we remind the High Courts that the jurisdiction of the High Court, in an appeal under Section 100 CPC, is strictly confined to the case involving substantial question of law and while deciding the second appeal under Section 100 CPC, it is not permissible for the High Court to reappreciate the evidence on record and interfere with the findings recorded by the courts below and/or the first appellate court and if the first appellate court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in second appeal. We have noticed and even as repeatedly observed by this Court and even in *Narayanan Rajendran* v. *Lekshmy Sarojini,* (2009) 5 SCC 264 : (2009) 2 SCC (Civ) 500, despite the catena of decisions of this Court and even the mandate under Section 100 CPC, the High Courts under Section 100 CPC are disturbing the concurrent findings of facts and/or even the findings recorded by the first appellate court, either without formulating the substantial question of law or on framing erroneous substantial question of law."

18. As no substantial question of law arises in the present case, accordingly, the judgment and decree dated 14.11.2022 passed by V

District Judge, Chhattarpur in Regular Civil Appeal No.67-A/2017 arising out the judgment and decree dated 13.7.2017 passed by II Civil Judge Class II, Rajnagar, district Chhattarpur in R.C.S.No.11-A/2014 are hereby **affirmed**.

19. The appeal fails and is hereby **dismissed** in *limine*.

(GURPAL SINGH AHLUWALIA)
JUDGE

HEMANT SARAF
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