
(1977) 01 AHC CK 0014
In the Allahabad High Court
Case No : Second Appeal No. 2567 of 1967

Sidh Nath Shukla and Others

APPELLANT

Vs

Smt. Roop Rani and Others

RESPONDENT

Date of Decision : 18-01-1977

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 15 Rule 2, 100

Citation : AIR 1977 All 286

Hon'ble Judges : M.P. Mehrotra, J

Bench : Single Bench

Advocate : V.C. Mishra, for the Appellant; K.C. Saxena, for the Respondent

Final Decision : Dismissed

Judgement

M.P. Mehrotra, J.—This second appeal has been filed by the plaintiff-appellants. The trial court decreed the suit against all the defendants. The lower appellate court, however, allowed the appeal filed by some of the defendants and modified the decree. The suit remained decreed against some of the defendants but was dismissed against the other defendants. Feeling aggrieved, the plaintiffs have now come up in the instant second appeal and their contention is that the decree passed by the lower appellate court should be set aside and that of the trial court be restored.

2. The brief facts are these:--

3. The plaintiffs alleged that in between the two lines shown by letters AB and MN in the site plan annexed to the plaint and to the north of K L and A G there had always been an open Sehan which was used by them and other residents of the Mohalla as a common Sehan for holding Panchayats, for the stay of the Barate and for feeding marriage parties and for various other purposes. It was further alleged that the defendant No. 8 Budh Sen had his house in the locality shown at figure X in the site plan The houses of Ram Nath Shukla and Budha Nai were situated at the places shown by letters Z and Y in the above site plan. It

was alleged that Smt. Roop Rani, the defendant No. 1, who was the wife of Budh Sen's son Natthi Lal, had, without right, title or interest, made constructions on the portion of the common Sehan shown by letters A E F G. It was alleged that defendants Nos. 6 and 7 Lekh Raj and Smt. Chandrawati had also constructed a Kachcha Chabutra with a Pucca embankment at the place D H I J in the Central portion of the common Sehan. The other defendants Nos. 2, 3 and 4, Ghafoor, Munshi and Babu Khan, also illegally constructed a Kachcha wall at the place C F and thus included B C F E, the portion of the common Sehan inside their own house-It was alleged that the above unauthorised constructions had been made by the aforesaid defendants at the instigation of defendant No. 8 Budh Sen; hence he had also been impleaded in the suit. It was further alleged that defendant No. 5 Bal Kishan had obtained a sale deed from defendants Nos. 6 and 7, Lekh Raj and Smt. Chandrawati with respect to the Chabutra DHIJ and hence Bal Kishan also had been impleaded in the suit. It was suggested that on account of the above unauthorised constructions, there had been a great obstruction in the common Sehan and passage owing to which the plaintiffs-appellants were driven to file the suit in question in a representative capacity under Order 1, Rule 8, C.P.C. A decree for possession was claimed over the pieces of land marked by letters AEFG, BCFE and DHIJ after removal of the unauthorised constructions made by the defendants.

4. It will be seen that the eight defendants impleaded in the suit fell into three sets. The first set consisted of Smt. Roop Rani, the defendant No. 1, Bal Kishan, the defendant No. 5 and Budh Sen, defendant No. 8. They filed one joint written statement. The second set consisted of the defendants Nos. 2, 3 and 4, Ghafoor, Munshi and Babu Khan respectively. The third set consisted of the defendants Nos. 6 and 7, namely. Lekh Raj and Smt. Chandrawati. The first set mainly contested the suit. The second set supported the plaint allegations and the third set did not file any written statement and the suit proceeded ex parte against them. The first set denied that the disputed tend had been a part of any common Sehan. It was pleaded that Budh Sen, the defendant No. 8, was owner of his house No. 4741 and of the land lying in front of It towards its East. The suit was alleged to have been instigated by one Ram Nath who was the brother of Sidh Nath, plaintiff No. 1. Ram Nath was alleged to have lost in several litigations with Budh Sen and hence he bore animosity against Budh Sen and his family. The judgments of the earlier litigations were also said to be res judicata in the instant suit. The plea of estopped was also taken.

5. The trial court framed the necessary issues and tried the suit. The plaintiffs' case was accepted and it was held that the defendants had made the alleged encroachments by raising constructions which were liable to be demolished. The suit was held to be maintainable and not barred by estopped or res judicata. The trial court, therefore, decreed the suit against the defendants.

6. Feeling aggrieved, the first set of the defendants, namely. Smt. Roop Rani, Bal Kishan and Budh Sen, filed an appeal in the lower appellate court and the same

was allowed. The lower appellate court held that the plaintiffs had failed to prove that the disputed pieces of land formed part of any common Sehan as alleged by them. It was further held that it was not proved that the Kotha which was sold by Ghafoor and others in favour of the defendant Smt. Roop Rani on 13th October, 1969 by sale deed Ext. A-8 lay 10 or 11 feet behind the disputed room A E F G. It was found that the disputed room A E F G was constructed at the place where originally stood the Kotha of Ghafoor and others which they sold in favour of Smt. Roop Rani. Thus the disputed room A E F G was not an encroachment as alleged by the plaintiffs. So far as the disputed Chabutra D H U was concerned, it was held that it was never purchased by Bal Kishan, the defendant No. 5, from defendants 6 and 7, Lekh Raj and Smt. Chandrawati, as the said vendors themselves had never acquired title to the same from the original owner Paltoo who had executed a sale deed on 29th March, 1946 in their favour. On a construction of the said document, it was held that the same did not cover the disputed chabutra and hence the purchasers Lekh Raj and Smt. Chandrawati did not acquire any title to the same and they themselves could not pass any in favour of Bal Kishan by the sale deed Ext. A-7 which they executed in favour of the latter on 27th February, 1962. Despite this finding, however, it was held that as the plaintiffs had failed to prove that the lands in dispute formed part of any common Sehan, therefore, they had no right to take exception to the unauthorised act of Bal Kishan in constructing the disputed Chabutra by encroaching on the land beneath the same. In the result, the lower appellate court held that the plaintiffs were not entitled to get back possession over the pieces of land marked as A E F G and DHIJ. They were held entitled to get relief against the defendants second set, namely, Ghafoor, Munshi and Babu Khan who had admitted the plaintiffs' claim in respect of portion of land marked BCFE.

7. In the second appeal, Sri V. C. Misra, learned counsel for the plaintiffs-appellants, has contended that the lower appellate court wrongly dismissed the suit in respect of the pieces of land marked A E F G and D H IJ. He has contended that the judgment of the lower appellate court is bad in law because of the misreading of evidence and due to the wrong construction placed on the documents of title on which reliance was placed by the plaintiffs. The lower appellate court observed in its judgment:

"The land in dispute lies in Mohall-a Gujarpara. The plaintiffs-respondents are residents of Nai Basti Katra Wazir Khan and not of Mohalla Gujarpara. The present suit being a representative suit under Order 1, Rule 8, C.P.C. it was absolutely necessary to have examined some witnesses from Mohalla Gujarpara."

8. Counsel's contention is that the lower appellate court failed to appreciate that the witnesses who were examined on behalf of the plaintiffs were residents of the disputed locality itself and he has submitted that confusion has been created on account of the nomenclature of the Mohalla. He has referred to the statement of P.W. 3 Sri Ram who has stated that in Katra Wazir Khan there are various Mohallas and that the land in dispute is situated in Mohalla Gujarpara.

Therefore, the lower appellate court was wrong in holding that because the plaintiffs' witnesses had stated that they were residents of Katra Wazir Khan, therefore, they could not be residents of Gujarpara. The latter was only a part of Katra Wazir Khan, and, therefore, a person who claimed to be resident of Katra Wazir Khan may as well be a resident of the sub-Mohalla Gujarpara. The vital thing was that the witnesses examined on behalf of the plaintiffs had clearly stated that they were from the locality in dispute itself. Sri Misra then contended that the lower appellate court wrongly interpreted Ext. A-8 dated 13th October, 1959 which was a sale deed executed by Ghafoor Khan and others in favour of Smt Roop Rani. He has referred to the boundaries in the said document and has contended that the lower appellate court did not properly appreciate the same with reference to the spot position. Lastly, it was contended that the lower appellate court indulged in a mere conjecture in holding that the second set of defendants was in collusion with the plaintiffs. It was contended that there was no evidence to that effect.

9. Sri K. C. Saksena, the learned counsel for the respondents, has contended that the findings recorded by the lower appellate court are pure findings of fact and even if there be some mistakes in the appreciation in isolated pieces of evidence, still, the findings cannot "be reversed because there are other pieces of good evidence on which the lower appellate court has placed reliance.

10. The learned counsel for both the sides cited copious case law on the true nature and scope of Section 100, C.P.C. Sri V. C. Misra placed reliance on the following cases: Kakumanu Peda Subbayya and Another Vs. Kakumanu Akkamma and Another, , Meenakshi Mills, Madurai Vs. The Commissioner of Income Tax, Madras, , Sarju Pershad Vs. Raja Jwaleshwari Pratap Narain Singh and Others, , AIR 1943 24 (Privy Council) , Raj Singh v. Gajraj Singh AIR 1966 All 335 , Nathu Lal and Others Vs. Dal Chand and Others, , Banarashi v. Sankarlal AIR 1861 Gua 13, Chief Inspector of Stamps v. Suraj Karan AIR 1949 All 170, Kantilal v. Vimla AIR 1952 Sau 44 , AIR 1925 386 (Oudh) , W. D. Naronha v. Trijugi Narayan 1957 All WR 567.

11. Sri K. C. Saksena, on the other hand, placed reliance on the following cases:-- Mattulal Vs. Radhe Lal, , Goppulal Vs. Thakurji Shriji Shriji Dwarakadheeshji and Another, , Abdul Waheed Khan Vs. Bhawani and Others, , State of Kerala Vs. K.M. Charia Abdullah and Co., , R. Ramachandran Ayyar Vs. Ramalingam Chettiar, , Shri Raja Durga Singh of Solan Vs. Tholu, , Jyotish Thakur and Others Vs. Tarakant Jha and Others, , Madamanchi Ramappa and Another Vs. Muthalur Bojjappa, , Gurbaksh Singh Vs. Nikka Singh, , Sir Chunilal V. Mehta and Sons, Ltd. Vs. The Century Spinning and Manufacturing Co., Ltd., , Pattabhiramaswamy v. S. Hanumayya AIR 1959 SC 57, Paras Nath v. Mohani Dasi AIR 1959 SC 1204 , Deoki Nandan Vs. Murlidhar, , Misri Lal v. Suraj (AIR 1950 PC 28).

12. In Mattulal Vs. Radhe Lal, , Bhagwati, J. has laid down as under:--

"It is settled law that the High Court in second appeal cannot reappreciate the evidence and interfere with findings of fact reached by the lower appellate court. The lower appellate court is final so far as findings of fact are concerned. The only limited ground on which the High Court can interfere in second appeal is that the decision of the lower appellate court is contrary to law. It is only an error of law which can be corrected by the High Court in exercise of its jurisdiction in second appeal. If the finding recorded by the lower appellate court is one of law or of mixed law and fact, the High Court can certainly examine its correctness, but if it is purely one of the fact, the jurisdiction of the High Court would be barred and it would be beyond the ken of the High Court unless it can be shown that there was an error of law in arriving at it or that it was based on no evidence at all or was arbitrary, unreasonable or perverse."

In *Goppulal Vs. Thakurji Shriji Shriji Dwarakadheeshji and Another*, , Bachawat, J. laid down as under:

"In the present case the first two courts on a review of the entire evidence came to the conclusion that the increase, of rent did not import a new demise. This finding of fact was binding on the High Court in second appeal. The High Court was in error in holding that there was one integrated tenancy of the six shops."

13. In *Abdul Waheed Khan Vs. Bhawani and Others*, , Subba Rao, J. observed as under:

"Learned counsel for the appellant then contended that though the patta was granted in favour of the ancestors of the respondents in the year 1929 it was revoked later on, that under the new settlement of 1935 the appellant's name was recorded in the register of rights, that in subsequent Khasras upto 1953 his name continued to be shown as the owner of the suit land and that, therefore, the court below should have held that the presumption raised by the register of rights in his favour was not rebutted and the plaintiff had failed to prove his title. But the perusal of the judgments of the Courts below shows that all the courts, after taking into consideration the entire oral and documentary evidence, came to the conclusion that the respondents had established then title. Indeed, though the High Court rightly pointed out that the finding of fact given by the lower appellate court was conclusive, in view of the insistence of the Advocate in the High Court, it considered the entire documentary and oral evidence over again and came to the same conclusion. It also admitted the notifications in respect of the settlement as fresh evidence and, after considering them, held that they did not disclose that the patta issued in favour of the respondents' ancestors was cancelled. In our view, the High Court should have accepted the finding of the first appellate court and should not have reviewed the evidence over again. The Courts in effect held that the said presumption was rebutted by the oral and documentary evidence adduced by the respondents. We are not, therefore, justified in an appeal under Art. 136 of the Constitution to permit the appellant to canvass the correctness of the said concurrent findings of fact"

In my opinion *State of Kerala Vs. K.M. Charia Abdullah and Co.*, has no relevance as I find no discussion about the nature and scope of Section 100, C.P.C. in the said case.

14. In *R. Ramachandran Ayyar Vs. Ramalingam Chettiar*, *Gajendragadkar, J.* laid down as under:

"The question about the limits of the jurisdiction of the High Court in entertaining second appeals has been considered by several High Courts in India as well as the Privy Council on numerous occasions, and the true legal position in that behalf is not at all in doubt. In hearing a second appeal, if the High Court is satisfied that the decision is contrary to law or some usage having the force of law, or that the decision has failed to determine some material issue of law or usage having the force of law, or if there is a substantial error or defect in the procedure provided by the Code, or by any other law for the time being in force which may have produced error or defect in the decision of the case upon the merits, it can interfere with the conclusions of the lower appellate court. That, in plain terms, is what Clauses (a), (b) and (c) of Section 100(1) provide. Mr. Chatterjee however, relies on Clause (c) of Section 100(1) and contends that the High Court found that there was a substantial error or defect in the procedure affecting the decision on the merits; and he seeks to support this contention on the ground that all the reasons given by the trial court in support of its finding that respondent No. 1 was not bound by the agreement, had not been duly considered by the lower appellate court, and that if a substantial error and defect in the procedure. He says that if the lower appellate court wanted to interfere with the trial court's conclusions of fact, it was necessary that all the reasons given by the trial court should have been examined and the whole of the evidence set out by the trial court in its judgment should have been taken into account. Since the judgment of the lower appellate court is not elaborate and some of the grounds set out in the trial court's judgment have not been examined, that constitutes an error or defect in the procedure and so, the High Court was entitled to correct that error or defect, because the said error or defect affected the decision of the merits in the case. The judgment of the appeal court Mr. Chatterjee contends, "must come into close quarters" with the judgment of the trial court and meet the reasoning given therein, before it can be treated as conclusive between the parties for the purposes of Section 100.

It is well known that as early as 1890, the Privy Council had occasion to consider this aspect of the matter in *Mst. Durga Chawdhrai v. Jawahir Singh* (1890) 17 I A 122 (PC). In that case, it was urged before the Privy Council, relying upon the decision of the Calcutta and Allahabad High Courts in *Futtehma Begum v. Mohamed Ausur* ILR (1883) Cal 309 and *Nivath Singh v. Bhikki Singh* ILR (1885) 7 All 649 (FB), respectively, that the High Court would be within its jurisdiction in holding that where the lower appellate court has clearly misapprehended what the evidence before it was, and has been led to discard or not give sufficient weight to other evidence to which it is not entitled, the High Court can interfere

u/s 100. This contention was rejected by for Privy Council and it was observed that an erroneous finding of fact is a different thing from an error or defect in procedure, and that there is no jurisdiction to entertain a second appeal on the ground of as erroneous finding of fact, however gross or inexcusable the error may seem to be. Their Lordships added that nothing can be clearer than the declaration in the CPC that no second appeal will lie except on the grounds specified in Section 584 (corresponding to Section 100 of the present Code), and they uttered a word of warning that no court in India or elsewhere has power to add to or enlarge those grounds. Since 1890, this decision has been treated as a leading decision on the question about the jurisdiction of the High Court in dealing with questions of facts in second appeal.

"It is necessary to remember that Section 100(1)(c) refers to a substantial error or defect in the procedure. The defect or error must be substantial-- that is one fact to remember; and the substantial error or defect should be such as may possibly have produced error or defect in the decision of the case upon the merits --that is another fact to be borne in mind. The error or defect in the procedure to which the clause refers is, as the clause clearly and unambiguously indicates, an error or defect connected with, or relating to, the procedure; it is not an error or defect in the appreciation of evidence adduced by the parties on the merits. That is why, even if the appreciation of evidence made by the lower appellate court is patently erroneous and the finding of fact recorded in consequence is grossly erroneous, that cannot be said to introduce a substantial error or defect in the procedure. On the other hand, if in dealing with a question of fact, the lower appellate court has placed the onus on a wrong party and its finding of facts is the result, substantially, of this wrong approach, that may be regarded as a defect in procedure; if in dealing with questions of fact, the lower appellate court discards evidence on the ground that it is inadmissible and the High Court is satisfied that the evidence was admissible, that may introduce an error or defect in procedure. If the lower appellate court fails to consider an issue which had been tried and found upon by the trial court and proceeds to reverse the trial court's decision without the consideration of such an issue, that may be regarded as an error or defect in procedure; if the lower appellate court allows a new point of fact to be raised for the first time before it, or permits a party to adopt a new plea of fact, or makes out a new case for a party, that may, in some cases, be said to amount to a defect or error in procedure. But the High Court cannot interfere with the conclusions of fact recorded by the lower appellate court, however, erroneous the said conclusions, may appear to be to the High Court, because, as the Privy Council has observed however gross or inexcusable the error may seem to be, there is no jurisdiction u/s 100 to correct that error."

15. In *Shri Raja Durga Singh of Solan Vs. Tholu*, , *Mudholkar, J.* observed as follows:--

"In *Pattabhiramaswamy v. S. Hanumayya* AIR 1959 SC 57 this Court held that finding of fact arrived at by the District Judge on the consideration of all

evidence, oral and documentary, adduced by the parties, cannot be set aside in second appeal. The question here is whether the respondents are the tenants of the appellant. Though for determining the question documentary evidence fell to be considered the finding on the question is no less a finding of fact than may have been the case if the evidence to be considered was merely oral. As was pointed out by this court in that case as well as recently in *Sir Chunilal V. Mehta and Sons, Ltd. Vs. The Century Spinning and Manufacturing Co., Ltd.*, , an issue of law does not arise merely because documents which are not instruments of title or otherwise the direct foundation of rights but are merely historical documents, have to be construed."

16. In *Jyotish Thakur and Others Vs. Tarakant Jha and Others*, , it was laid down by Das Gupta, J.:--

"That the question whether the raiyati interest continued to exist after Santokhi acquired the proprietary interest is a question of fact and the trial court and the Court of First Appeal having held that that interest had ceased to exist it was not open to the High Court in second appeal to go behind that finding. It is not possible to say, however, in the facts and circumstances of the present case, that the question whether the raiyati interest continued or not after Santokhi purchased the proprietary interest is a pure question of fact. The decision of the question depended on a correct appreciation of the doctrine of merger as applicable to Santhal Parganas and so, the question whether the raiyati interest continued to subsist after Santokhi's purchase of the proprietary interest cannot but be considered to be a mixed question of law and fact."

17. In *Madamanchi Ramappa and Another Vs. Muthalur Bojjappa*, , Gajendragadkar, J. laid down as under:--

"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 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."

18. In *Gurbaksh Singh Vs. Nikka Singh*, , Subba Rao, J. laid down as under:--

"It is true that as early as 1931 the Privy Council held that the High Court had no jurisdiction to entertain a second appeal on the ground of erroneous findings of fact however gross the error may seem to be, and the said ruling has since been followed by all the Courts in India and accepted by this court in a number of decisions. But in this case the learned District Judge has not given any finding on the question of title, but contented himself to dispose of the appeal on the ground that the appellant purchased the land in good faith from Mula Singh. The question of title was, therefore, left open and the High Court was certainly within its right in giving its own finding thereon."

The finding given by the learned District Judge that the appellant was a bona fide purchaser in good faith was not based on the evidence in the case, but was merely an ipse dixit. Nor did the District Judge consider the impact of the provisions of Section 41 of the Transfer of Property Act on the facts of the case such a finding arrived at without evidence and without applying the correct principles of law cannot obviously bind the High Court."

19. In *Sir Chunilal V. Mehta and Sons, Ltd. Vs. The Century Spinning and Manufacturing Co., Ltd.*, , Mudholkar, J. laid down as under:--

"It is well settled that the construction of a document of title or of a document which is the foundation of the rights of parties necessarily raises a question of law."

20. In AIR 1959 SC 57 (supra), Subba Rao, J. laid down as under:--

"The provisions of Section 100 are clear and unambiguous. There is no jurisdiction to entertain a second appeal on the ground of erroneous finding of fact, however gross the error may seem to be. Nor does the fact that the finding of the first appellate court is based upon some documentary evidence make it any the less a finding of fact. A judge of the High Court has, therefore, no jurisdiction to interfere in second appeal with the findings of fact given by the first appellate court based upon an appreciation of the relevant evidence. (The practice of some Judges of the High Court disposing second appeals as if they were first appeals deprecated)."

21. In AIR 1959 SC 1204 (supra), Sinha, J. laid down as under:--

"A High Court on second appeal, cannot go into questions of fact, however erroneous the findings of fact recorded by the courts of fact may be."

22. In *Deoki Nandan Vs. Murlidhar*, , it has been laid down as under:--

"The question as to the scope of the dedication is a mixed question of law and fact, the decision of which must depend on the application of legal concepts of a public and a private endowment to the facts found."

23. In *AIR 1950 PC 28 (supra)*, the head notes are as follows:--

"Finding that certain transaction was benami supported by evidence--Finding cannot be challenged in second appeal.

Appreciation of evidence -- Lower courts rejecting evidence of certain witness as unreliable -- High Court in second appeal accepting such evidence exceeds its powers u/s 100."

24. As stated above, *Sri V. C. Misra*, learned counsel for the appellant, has also relied on a number of Supreme Court cases and the other cases from various High Courts.

25. In *Kakumanu Peda Subbayya and Another Vs. Kakumanu Akkamma and Another*, , it has been laid down as under:

"Where the lower courts had misunderstood the real point for determination in arriving at a finding of fact that the institution of suit was not for the benefit of the minor.

Held that the High Court could interfere with that finding in second appeal and had rightly held that the suit was instituted for the benefit of the minor plaintiff."

26. In *Meenakshi Mills, Madurai Vs. The Commissioner of Income Tax, Madras*, , the court considered the scope of Section 66 (1) of the Indian Income Tax Act, 1922. It was laid down as under:--

"Under Section 66 (1) it is only a question of law that can be referred for decision of the court. A finding on a question of fact is open to attack as erroneous in law only if it is not supported by any evidence, or if it is unreasonable and perverse; but where there is evidence to consider, the decision of the tribunal is final even though the court might not on the materials, have come to the same conclusion if it had the power to substitute its own judgment.

When a conclusion has been reached on an appreciation of a number of facts established by the evidence, whether that is sound or not must be determined not by considering the weight to be attached to each single fact in isolation, but by assessing the cumulative effect of all the facts in their setting in the picture as a whole.

Where a finding is given on a question of fact based on an inference from facts, that is not always a question of law. The proposition that an inference from facts

is one of law will be correct in its application to mixed questions of law and fact but not to pure questions of fact.

Inferences from facts may themselves be inferences of fact and not of law, and such inferences are not open to review by the court.

Inference from facts would be a question of fact or of law according as the point for determination is one of pure fact or mixed question of law and fact.

The position for making a reference u/s 66 may thus be summed up : (1) When the point for determination is a pure question of law such as construction of a statute or document of title, the decision of the Tribunal is open to reference to the Court u/s 66 (1).

(2) When the point for determination is a mixed question of law and fact, while the finding of the Tribunal on the facts found is final its decision as to the legal effect of those findings is a question of law which can be reviewed by the court.

(3) A finding on a question of fact, is open to attack u/s 66 (1) as erroneous in law when there is no evidence to support it or if it is perverse.

(4) When the finding is one of fact, the fact that it is itself an inference from other basic facts will not alter its character as one of fact."

27. In AIR 1943 24 (Privy Council) , it has been laid down as under:--

"Since findings of fact by the first appellate Court are to be treated as final they should at least be clear and specific --not ambiguous or inferential. A general approval given to the views of the trial court will not necessarily incorporate all its findings in detail--especially if accompanied by language which casts doubt on a particular point."

28. In Raj Singh Vs. Ch. Gajraj Singh, it was laid down as under:

"the First appellate court was the final court of facts and the findings of fact recorded by it must be respected by the High Court in second appeal unless they are perverse, unsupported by evidence or are vitiated by an essentially wrong approach. It is not open to the plaintiff appellant to request the High Court to reappraise the evidence."

29. In 1957 All WR 567 (supra) it was laid down as under:

"A finding with regard to possession is a finding of fact and has to be accepted unless there is something which shews that this finding is not warranted from the evidence on the record."

39. AIR 1949 AH 170 (supra) does not seem to be relevant as it does not deal with Section 100. C.P.C. at all.

31. Nathu Lal and Others Vs. Dal Chand and Others, , a learned single Judge laid down as under:

"Findings of fact ordinarily bind the High Court in second appeal; but the High Court has power to reverse a finding of fact if it appears to be based on reasoning which is manifestly wrong."

32. In AIR 1961 Gua 13 (supra) a Division Bench laid down as under:--

"The principle inculcated in the two Privy Council cases is that there is no jurisdiction to entertain a second appeal on the ground of erroneous finding of facts, or that the High Court has no jurisdiction to reverse the finding of fact arrived at by the lower appellate court--however gross the error may seem to be --and that the question whether a fact has been proved when evidence for and against has been properly admitted, is necessarily a pure question of fact but at the same time their Lordships observed that "no doubt questions of law and fact are often difficult to disentangle." The decision of this Court referred to above only follows these Privy Council decisions. In this case the finding could not be treated as correct or conclusive because it was based on a wrong hypothesis or presumption and not on any direct evidence to the effect that the father-in-law acted adversely to the interest of the plaintiff."

33. In AIR 1952 Sau 44 (supra), a Division Bench laid down as under:--

"A finding of the lower appellate court not in accordance with proved facts cannot be accepted as binding in second appeal."

34. In AIR 1925 386 (Oudh) , a learned single Judge laid down as under:--

"A finding of fact based upon quaint reasoning can and must be interfered with."

35. Applying the taste laid down in, the aforesaid cases, it seems to me that the appellant has failed in his attempt to establish that this court can interfere u/s 100, C.P.C. in the verdict returned by the lower appellate court. It is true that the said court under an erroneous belief that the witnesses examined on behalf of the plaintiffs were residents of Katra Wazir Khan and not of Mohalla Gujarpara was not inclined to believe their testimony. It seems to me that Sri V. C. Misra is right in this contention that mere difference in the nomenclature of the Mohallas did not lead to the inference that the witnesses were not from the locality in dispute itself. The correct position seems to be that Gujarpara is a part of Nai Basti Katra Wazir Khan. However, the lower appellate court has given other reasons for not believing the said witnesses. It has come to the conclusion that the witnesses are not independent inasmuch as some of them happened to be related to the plaintiff and some others have been held to be on inimical terms with the contesting defendants. Similarly, in my opinion, the mere fact that in the construction of the sale deed Ext. A-8, two sides of the boundaries alone were considered and not the other two sides which according to the learned counsel were more consistent with the case of the plaintiffs-appellants would not be a sufficient ground for displacing the conclusion itself which was recorded by the lower appellate court namely, that the room in dispute AEFG stood on the same place where formerly the Kotha of Gafoor Khan and others stood and which was

sold by them in favour of the defendant Smt. Roop Rani. The lower appellate court has reached the said conclusion on the basis of the oral evidence also which has been considered by it and in particular the statement of D.W. 3 has been relied on as being the statement of an independent witness.

36. Sri V. C. Misra, learned counsel for the plaintiffs-appellants sought to contend that there was an element of inconsistency in the approach of the lower appellate court. While it returned a finding that there was no common Sehan as alleged by the plaintiffs, still, it decreed the suit against the defendants Ghafoor Khan, Munshi Khan and Babu Khan and dismissed the same against the other defendants, In my opinion, this is not a correct contention because the suit was decreed against the said defendants on the basis of their, own admission. When the plaintiff's case is admitted by the defendants or some of them, then unless the suit itself is not maintainable on some legal ground, the court is bound to decree the suit against the admitting defendant. There is no contention between the parties and no issues arise and, therefore, the court is not called upon to go into any dispute at all. The lower appellate court's decision cannot be, therefore, said to be bad on this ground.

37. In my opinion, therefore, it cannot be said that the instant case is one of those cases where this court can interfere in the findings recorded by the lower appellate court which are undoubtedly pure findings of fact and no question of law or even mixed questions of law and fact are involved.

38. This second appeal, therefore, fails and is hereby dismissed with costs.