
(2014) 05 SHI CK 0030
In the High Court Of Himachal Pradesh
Case No : R.S.A. No. 115 of 2014

Surinder Singh Sautha

APPELLANT

Vs

Raja Yogindra Chandra

RESPONDENT

Date of Decision : 29-05-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1, Order 14 Rule 5, 100, 103, 15, 15
Easements Act, 1882 — Section 60, 60(a)
Himachal Pradesh Courts Act, 1976 — Section 10, 9
Suits Valuation Act, 1887 — Section 11

Citation : (2014) 05 SHI CK 0030

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : K.D. Sood, Senior Advocate with Mr. Vinay Thakur, Advocate for the Appellant; Bhupender Gupta, Senior Advocate with Mr. Neeraj Gupta, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J.—This Regular Second Appeal u/s 100 of the Code of Procedure has been preferred by the defendant/appellant against judgment and decree dated 15.1.2000 passed by learned Addl. District Judge, Shimla, Circuit Court at Rohru in Civil Appeal No. 75-S/13 of 1996 whereby he partly allowed the appeal of the defendant/appellant.

2. The brief facts as per pleadings of the parties are that the suit property comprises the land comprised in Khasra No. 5140/2 measuring 0-7 biswas over which there is a structure of building known as Annexe building, situated in Chak Deora, Tehsil Jubbal, Distt. Shimla, H.P. having compound in khasra No. 5140/3 measuring 1 biswa and kh. No. 5121/1 measuring 0-2 biswas. The plaintiff has claimed himself to be owner of the suit property which was given by the father of the plaintiff to Dr. late Shri R.P. Sauhta for his residential house and clinic use till the life time of Dr. R.P. Sauhta in lieu of his services provided to the Royal family

as well as to facilitate the medical services in the area to the general public. It was pleaded by the plaintiff that the suit property was given on licence as nothing was to be charged in lieu of the services rendered by Dr. R.P. Sauhta to the Royal family without any charges.

3. It was further pleaded that the Sh. R.P. Sauhta died in the month of August, 1990 and the licence stands expired on his death but the defendant has not handed over the possession of the suit property despite request by the plaintiff to vacate the same as the defendant is occupying the suit property without any right, title and interest as trespasser after the life time of Dr. R.P. Sauhta. It was pleaded that the defendant has started to demolish a part of an old wall to the suit property and has also started improvement over the suit property without any right, title or interest, hence, the suit was filed by the plaintiff for possession of the suit property.

4. The suit was contested by the defendant by filing written statement, in which preliminary objections qua valuation, estoppel and limitation have been taken. On merits, the defendant denied the ownership of the plaintiff over the suit property and pleaded that the suit property was given by the father of the present plaintiff Raja Digvijay Chander to the father of the defendant in the year 1957 by way of oral gift in lieu of medical services rendered to the Royal family as the father of the defendant was a medical officer in the Government service and the father of the plaintiff persuaded to resign from the Government service and to join as personal medical Doctor of Royal family and allured with the gift of the suit property for residence as well as for clinic purposes.

5. It was further pleaded by the defendant that the value of the suit property was not more than the sacrifices by the father of the defendant who resigned the Government job in lieu of medical services to the Royal family of the father of the plaintiff. The possession of the suit property was delivered in the year 1957 to the father of the defendant and thereafter remained in possession till his death in the year 1990 and provided the medical services to the Royal family till his last with full devotion and ability. The defendant claimed exclusive ownership over the suit property and pleaded that there was no condition to hand over the possession of the suit property on the death of his father as the same had already been gifted by the father of the plaintiff in lieu of medical services rendered after resigning from the Government job thereby defendant has denied any right, title or interest over the suit property of the plaintiff as the defendant has claimed exclusive ownership of the same. He has also denied any removal of the stone wall or any repairs which is going to diminish the value of the suit property. The defendant has been maintaining the suit property to be his own property and thereby prayed for dismissal of the suit.

6. The plaintiff filed replication in which the preliminary objections taken by the defendant in the written statement and also the plea of the defendant on merits were denied. The contents made by the plaintiff in the plaint were reasserted.

7. On the pleadings of the parties, following issues were framed by the learned trial Court on 12.8.1993:

1. Whether the plaintiff is the exclusive owner of the suit land and premises as alleged? OPP.
2. Whether the land kh. No. 5121/1, kh. No. 5140/2 and kh. No. 5140/3 were given to Dr. R.P. Sauhta, for his residential and clinic use till his life time as alleged? OPP
3. Whether the land and houses in suit were to be given by Dr. R.P. Sauhta to the royal family after his services were not required or till his death as alleged? OPP
4. Whether the repairs etc. were done by the plaintiff to the house in question during the period Dr. R.P. Sauhta remain in possession as alleged? OPP
5. Whether the suit has not been properly valued for the purpose of court fee as alleged? OPD
6. Whether the plaintiff is estopped from filing the present suit as alleged? OPD
7. Whether the suit is barred by limitation? OPD
8. Relief.

8. The learned trial Court after recording and evaluating the evidence was pleased to pass the following decree:-

Decree for possession of the suit property comprising structure and the land over kh. No. 5140/2, 5140/3, 5121/1, 5140/4 and 5121/3, situated in Chak Deora, Tehsil Jubbal, Distt. Shimla, H.P. in favour of the plaintiff and against the defendant.

9. Aggrieved by the judgment and decree passed by the learned trial Court, the defendant preferred an appeal before learned lower appellate Court, who vide its judgment and decree dated 15.1.2000 has partly allowed the appeal and the decree of the learned trial Court was though upheld, but the same was subject to the payment of court fee. Since the learned lower Appellate Court assessed the market value of the suit property at Rs. 50,000/- for the purposes of court fee and jurisdiction, the deficiency in the court fee was directed to be made good within two months. It is against this judgment, the defendant/appellant has come in second appeal before this Court.

10. The appeal is admitted on the following substantial questions of law:

1. Whether the findings of the Court below are perverse, based on misreading of oral and documentary evidence as also pleadings of the parties and drawing up of wrong inferences from the facts proved on record which has vitiated the findings?
2. Whether the findings of the court below are perverse, based on misreading of

oral and documentary evidence and the suit of the plaintiff-respondent had been wrongly decreed though the trial Court had no jurisdiction to try the suit, particularly, the value of the property as more than the jurisdictional value of the suit triable by the trial Court though the learned District Judge has found that the value of the property is Rs. .50,000/-?

3. Whether the Additional District Judge had exercised judicial discretion in extending time to pay the court fees by another two months after the same and not passing a fresh judgment and decree when the suit stood dismissed by force of the previous judgment itself?

4. Whether the learned Additional District Judge has right in fixing the value of suit property at Rs. .50,000/- only without any basis when in the facts and circumstances of the case the value of the suit property should have been determined above Rs. .5.00 lacs and the trial Court held to have no jurisdiction to decide the suit?

5. Whether the Court below had adopted right procedure in determining the value of the suit for the purposes of Court fees and jurisdiction when the plaintiff had led no evidence on the said issues?

6. Whether the transaction in question amounted to creation of licence coupled with grant which was not revocable in view of the additional construction made and improvement effected in the property by the father of the appellant with the knowledge and consent of the plaintiff?

7. Whether proper issues arising out of the pleadings of the parties have not been framed which has vitiated the findings, more particularly, regarding creation of licence coupled with grant and permission to carry out reconstruction and repairs which had been done with the knowledge and consent of the plaintiff and licence had been not revocable?

11. With the consent of the parties, the appeal is taken up for final hearing.

12. I have heard learned counsel for the parties and have also gone through the record carefully.

Substantial question of law No. 1:

13. The learned counsel for the appellant could not convince me as to how the findings recorded by the learned Courts below were in any manner perverse or based on misreading of oral and documentary evidence whereby the pleadings of the parties had been misconstrued, misinterpreted. The learned trial Court as also the learned lower Appellate Court has painstakingly dealt with the pleadings of the parties and thereafter considered the evidence both oral and documentary in its right perspective.

Substantial questions of law No. 2, 4 and 5:

14. Since these questions are inter-related and inter-connected, therefore, the

same are taken up for disposal by common reasoning.

15. The learned counsel for the appellant contended that the learned trial Court had no jurisdiction to try the suit, particularly when the value of the property was proved on record to be more than Rs. .50,000/-. In fact, even the findings recorded by the learned District Judge that the suit property was valued more than Rs. .50,000/- and thereafter could not have been tried and adjudicated by the learned trial Court. He drew my attention to Sections 9 and 10 of the H.P. Courts Act, 1976 as also to the notification whereby the pecuniary jurisdiction of the learned trial Court has been fixed at Rs. .50,000/-.

There is no quarrel regarding the pecuniary jurisdiction of the learned trial Court and the learned counsel for the appellant was urged to proceed with his arguments on the assumption that the learned trial Court lacked pecuniary jurisdiction to deal with the suit, then what would be the result in case the learned trial Court had proceeded to pass a decree against the appellant. Initially the learned counsel for the appellant would contend that the decree would be without jurisdiction but later on he urged that because prejudice had been caused to the appellant, therefore, the decree passed by the learned trial Court and affirmed by the learned lower appellate Court was non est and void ab initio in the eyes of law.

16. According to learned counsel for the appellant the prejudice was writ large as admittedly in this case the value of the property was more than Rs. .50 lacs as had been proved on record, therefore, the suit could have only been adjudicated upon by this Court. According to him, the prejudice had been caused when the case had been tried by the learned subordinate Judge, who was immature, lacked experience and knowledge and moreover, further prejudice had been caused to him when there were many appellate Courts in judicial hierarchy. According to him, the High Court had more mature and experienced Judges, who decided the cases more expeditiously and there would be hardly be any chance of appeal. Even otherwise, the decision rendered by the High Court would be more acceptable than by the subordinate Courts.

17. Mr. Bhupender Gupta, Senior Advocate, learned counsel for the respondent, on the other hand, contended that this plea is nothing but an after thought and submissions made by the appellant qua the prejudice caused to him for the reasons assigned would be undermining the creditability of the subordinate Courts itself which is not permissible in law. He has further contended that on account of so called delay before the learned Courts below, it is the appellant, who has been the biggest beneficiary as he has been successful in squatting over the property in dispute without paying a single paise towards use and occupation charges or mesne profit. Having enjoyed the property in such a manner, he, therefore, cannot be heard to complain.

I find force in the submission made by learned counsel for the respondent. It is the appellant, who has been beneficiary of this prolonged litigation, particularly

when he has been successful in enjoying the use and usufruct of the property for the last more than two decades, therefore, there cannot be any occasion for him to complain. Further I cannot agree with the contention of the appellant that prejudice has been caused to him on account of suit having been determined by the subordinate Court(s) and not this Court. In case such a plea is upheld, it would not only be undermining but would also be maligning the subordinate Courts. Taking into consideration the status and responsibility, the judicial hierarchy is created but in so far as the judicial working is concerned, it cannot be denied that all the courts from the lowest to the highest in the hierarchal order are governed by the rule of law and have to decide the lis in accordance with law.

18. The next point raised by learned counsel for the appellant is that the order passed by a Court lacking pecuniary jurisdiction is void, ab initio and, therefore, the judgment passed by the learned trial Court as affirmed by the learned lower Appellate Court is without jurisdiction and deserves to be set-aside. He referred to number of decisions of the various High Courts on the question viz. Mamraj Agarwala and on his Death his heirs and Legal Representatives Chhagmal Agarwala and Others Vs. Ahmad Ali Mahamad, , Mool Chand Moti Lal Vs. Ram Kishan and Others , Shyam Nandan Sahay and Others Vs. Dhanpati Kuer and Others, and The Controller of Stores and Another Vs. Kapoor Textile Agencies, .

19. The judgments relied upon by learned counsel for the appellant would not be of much significance and have lost efficacy in view of the judgment of the Hon"ble Supreme Court in Kiran Singh and Others Vs. Chaman Paswan and Others, wherein the Hon"ble Supreme Court held that when a case had been tried by a court on merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the legislature has been to treat objections of jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate Court, unless there has been a prejudice on the merits. Further it may be observed that there have been a number of subsequent pronouncements of the Hon"ble Apex Court and also by this Court on this issue which otherwise are binding on this Court. The same are referred to and discussed in detail in the later part of the judgment.

20. The entire law with regard to the decree passed by a Court lacking pecuniary jurisdiction has been discussed in detail by the Hon"ble Supreme Court in Subhash Mahadevasa Habib Vs. Nemasa Ambasa Dharmadas (D) by LR. and Others, and the position has been summed up as follows:

33. What is relevant in this context is the legal effect of the so-called finding in OS No. 4 of 1972 that the decree in OS No. 61 of 1971 was passed by a court which had no pecuniary jurisdiction to pass that decree. The CPC has made a distinction between lack of inherent jurisdiction and objection to territorial jurisdiction and pecuniary jurisdiction. Whereas an inherent lack of jurisdiction may make a decree passed by that court one without jurisdiction or void in law, a

decree passed by a court lacking territorial jurisdiction or pecuniary jurisdiction does not automatically become void. At best it is voidable in the sense that it could be challenged in appeal therefrom provided the conditions of Section 21 of the CPC are satisfied.

34. It may be noted that Section 21 provided that no objection as to place of the suing can be allowed by even an appellate or revisional court unless such objection was taken in the court of first instance at the earliest possible opportunity and unless there has been a consequent failure of justice. In 1976, the existing section was numbered as sub-section (1) and sub-section (2) was added relating to pecuniary jurisdiction by providing that no objection as to competence of a court with reference to the pecuniary limits of its jurisdiction shall be allowed by any appellate or revisional court unless such objection had been taken in the first instance at the earliest possible opportunity and unless there had been a consequent failure of justice. Section 21-A also was introduced in 1976 with effect from 1.2.1977 creating a bar to the institution of any suit challenging the validity of a decree passed in a former suit between the same parties on any ground based on an objection as to the place of suing. The amendment by Act 104 of 1976 came into force only on 1.2.1977 when OS No. 4 of 1972 was pending. By virtue of Section 97(2)(c) of the Amendment Act, 1976, the said suit had to be tried and disposed of as if Section 21 of the Code had not been amended by adding sub-section (2) thereto. Of course, by virtue of Section 97(3) Section 21-A had to be applied, if it has application. But then, Section 21-A on its wording covers only what it calls a defect as to place of suing.

35. Though Section 21-A of the Code speaks of a suit not being maintainable for challenging the validity of a prior decree between the same parties on a ground based on an objection as to "the place of suing", there is no reason to restrict its operation only to an objection based on territorial jurisdiction and excluding from its purview a defect based on pecuniary jurisdiction. In the sense in which the expression "place of suing" has been used in the Code it could be understood as taking within it both territorial jurisdiction and pecuniary jurisdiction.

36. Section 15 of the Code deals with pecuniary jurisdiction and, Sections 15 to 20 of the Code deal with "place of suing". The heading "place of suing" covers Section 15 also. This Court in *The Bahrein Petroleum Co. Ltd. Vs. P.J. Pappu and Another*, made no distinction between Section 15 on the one hand and Sections 16 to 20 on the other, in the context of Section 21 of the Code. Even otherwise, considering the interpretation placed by this Court on Section 11 of the Suits Valuation Act and treating it as equivalent in effect to Section 21 of the CPC as it existed prior to the amendment in 1976, it is possible to say, especially in the context of the amendment brought about in Section 21 of the Code by Amendment Act 104 of 1976, that Section 21-A was intended to cover a challenge to a prior decree as regards lack of jurisdiction, both territorial and pecuniary, with reference to the place of suing, meaning thereby the court in which the suit was instituted.

37. As can be seen, Amendment Act 104 of 1976 introduced sub-section (2) relating to pecuniary jurisdiction and put it on a par with the objection to territorial jurisdiction and the competence to raise an objection in that regard even in an appeal from the very decree. This was obviously done in the light of the interpretation placed on Section 21 of the Code as it existed and Section 11 of the Suits Valuation Act by this Court in *Kiran Singh and Others Vs. Chaman Paswan and Others*, followed by *Seth Hiralal Patni Vs. Sri Kali Nath*, and *The Bahrein Petroleum Co. Ltd. Vs. P.J. Pappu and Another*, . Therefore, there is no justification in understanding the expression "objection as to place of suing" occurring in Section 21-A as being confined to an objection only in the territorial sense and not in the pecuniary sense. Both could be understood, especially in the context of the amendment to Section 21 brought about by the Amendment Act, as objection to place of suing.

38. It appears that when the Law Commission recommended insertion of Section 21-A into the Code, the specific provision subsequently introduced in sub-section (2) of Section 21 relating to pecuniary jurisdiction was not there. Therefore, when introducing sub-section (2) of Section 21 by Amendment Act 104 of 1976, the wordings of Section 21-A as proposed by the Law Commission were not suitably altered or made comprehensive. Perhaps, it was not necessary in view of the placing of Sections 15 to 20 in the Code and the approach of this Court in *The Bahrein Petroleum Co. Ltd. Vs. P.J. Pappu and Another*, . But we see that an objection to territorial jurisdiction and to pecuniary jurisdiction, is treated on a par by Section 21. The placing of Sections 15 to 20 under the heading "place of suing" also supports this position. Taking note of the object of the amendment in the light of the law as expounded by this Court, it would be incongruous to hold that Section 21-A takes in only an objection to territorial jurisdiction and not to pecuniary jurisdiction. We are therefore inclined to hold that in the suit OS No. 4 of 1972, the validity of the decree in OS No. 61 of 1971 could not have been questioned based on alleged lack of pecuniary jurisdiction. Of course, the suit itself was not for challenging the validity of the decree in OS No. 61 of 1971 and the question of the effect of the decree in OS No. 61 of 1971 only incidentally arose. In a strict sense, therefore, Section 21-A of the Code may not ipso facto apply to the situation.

39. But the fact that Section 21(2) or Section 21-A of the Code may not apply would not make any difference in view of the fact that the position was covered by the relevant provision in the Suits Valuation Act, 1887. Section 11 of the Suits Valuation Act provided that notwithstanding anything contained in Section 578 (Section 99 of the present Code covering errors or irregularity) of the Code of Civil Procedure, an objection that a court which had no jurisdiction over a suit had exercised it by reason of undervaluation could not be entertained by an appellate court unless the objection was taken in the court of first instance at or before the hearing at which the issues were first framed or the appellate court is satisfied for reasons to be recorded in writing that the overvaluing or undervaluing of the suit has prejudicially affected the disposal of the suit. There

was some confusion about the content of the section.

40. The entire question was considered by this Court in *Kiran Singh and Others Vs. Chaman Paswan and Others*, . Since in the present case, the objection is based on the valuation of the suit or the pecuniary jurisdiction, we think it proper to refer to that part of the judgment dealing with Section 11 of the Suits Valuation Act. Their Lordships held: (AIR p.342, para 7)

7.....It provides that objections to the jurisdiction of a court based on overvaluation or undervaluation shall not be entertained by an appellate court except in the manner and to the extent mentioned in the section. It is a self-contained provision complete in itself, and no objection to jurisdiction based on overvaluation or undervaluation can be raised otherwise than in accordance with it.

With reference to objections relating to territorial jurisdiction, Section 21 of the CPC enacts that no objection to the place of suing should be allowed by an appellate or revisional court, unless there was a consequent failure of justice. It is the same principle that has been adopted in Section 11 of the Suits Valuation Act with reference to pecuniary jurisdiction. The policy underlying Sections 21 and 99 of the CPC and Section 11 of the Suits Valuation Act is the same, namely, that when a case had been tried by a court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate court, unless there has been a prejudice on the merits.

In *Seth Hiralal Patni Vs. Sri Kali Nath*, , it was held that: (AIR p.201, para 4)

4..... It is well settled that the objection as to local jurisdiction of a court does not stand on the same footing as an objection to the competence of a court to try a case. Competence of a court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a case of inherent lack of jurisdiction. On the other hand an objection as to the local jurisdiction of a court can be waived and this principle has been given a statutory recognition by enactments like Section 21 of the Code of Civil Procedure.

In *The Bahrein Petroleum Co. Ltd. Vs. P.J. Pappu and Another*, , it was held Section 21 is a statutory recognition of the principle that the defect as to the place of suing under Sections 15 to 20 of the Code may be waived and that even independently of Section 21, a defendant may waive the objection and may be subsequently precluded from taking it.

21. In fact, a similar proposition came up before this Court (Coram: Deepak Gupta, J, as his Lordship then was) in *Tikam Ram and Others Vs. Sh. Purshotam Ram and Others*, wherein again after noticing all the relevant provisions along with law, it was held as under:

19. To appreciate the rival contentions of the parties, it would be appropriate to refer to Section 21 of the CPC and Section 11 of the Suits Valuation Act which read as follows:

Civil Procedure Code:

21. Objections to jurisdiction.-[(1) No. objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(2) No objection as to the competence of a court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice.

Suits Valuation Act

11. Procedure where objection is taken on appeal on revision that a suit or appeal was not properly valued for jurisdictional purposes.-[(1) Notwithstanding anything in [Section 578 of the CPC (14 of 1882)] and objection that by reason of the over-valuation or under-valuation of suit or appeal a Court of first instance or lower Appellate Court which had no jurisdiction with respect to the suit or appeal exercise jurisdiction with respect thereto shall not be entertained by an Appellate Court unless.-

(a) the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded, or in the lower Appellate Court in memorandum of appeal to that Court, or

(b) the Appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was over-valued or undervalued, and that the over-valuation or undervaluation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

(2) If the objection was taken in the manner mentioned in clause (a) of subsection (1), but the Appellate Court is not satisfied as to both the matters mentioned in clause (b) of that subsection and has before it the materials necessary for the determination of the other grounds of appeal to itself, it shall dispose of the appeals as if there had been no defect of jurisdiction in the Court of first instance or lower Appellate Court.

(3) If the objection was taken in that manner and the Appellate Court is satisfied

as to both those matters and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the Court with respect to the hearing of appeals; but if it remands the suits or appeal, or frames and refers issues for trial, or requires additional evidence to be taken, it shall direct its order to a Court competent to entertain the suit or appeal.

(4) The provisions of the Section with respect to an Appellate Court shall, so far as they can be made applicable, apply to a Court exercising revisional jurisdiction under [Section 622 of the CPC (14 of 1882)] or other enactment for the time being in force.

(5) This Section shall come into force on the first day of July, 1887.

20. The Apex Court in Kiran Singh and Others Vs. Chaman Paswan and Others, was dealing with a case for recovery of possession of more than 12 acres of land. The suit was dismissed. The plaintiff thereafter filed an appeal in the court of District Judge who also dismissed the appeal. In the second appeal, the plaintiffs for the first time raised an objection that the suit itself had not been properly valued for the purpose of Court fee and jurisdiction and prayed that their appeal should be treated as a first appeal against the order of the learned trial Court. The High Court rejected the plea of the plaintiffs on the ground that the defendants could succeed only when they established prejudice on the merits of the case. An appeal was filed before the Apex Court and it was urged that the decree passed by the District Judge was a nullity because in an original suit having valuation of Rs. 9980/-, appeal would lie to the High Court alone and not to the District Judge. The Apex Court held as follows:-

It is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties.

21. Relying upon these observations, Sh. Bhupender Gupta, learned senior counsel for the respondents submits that the decree and judgment of the learned trial Court is a nullity and the learned District Judge was justified in ordering the return of the plaint. This argument cannot be accepted to be correct because it was after making these observations that the Apex Court dealt with Section 11 of the Suits Valuation Act.

22. Dealing with the import of the word prejudice occurring in Section 11, the Apex Court held as follows:-

The language of Section 11 of the Suits Valuation Act is plainly against such a view. It provides that over valuation or undervaluation must have prejudicially affected the disposal of the case on the merits. The prejudice on the merits must

be directly attributable to over valuation or under valuation and an error in a finding of fact reached on a consideration of the evidence cannot possibly be said to have been caused by over valuation or undervaluation. Mere errors in the conclusions on the points for determination would therefore be clearly precluded by the language of the Section.

23. It is also important to note that the aforesaid decision of the Apex Court was rendered much before the amendment of Section 21 of the Code of Civil Procedure. Vide CPC Amendment Act, 1976, sub-sections 2 and 3 were introduced in Section 21 and sub-section 2 clearly provides that no objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate Court unless such objection was taken in the court of the first instance at the earliest possible opportunity before settlement of issues and unless there has been a consequent failure of justice. Sub section 2 clearly envisages that not only should the objections have been taken at the first instance but there should have been consequent failure of justice. If there is no failure of justice then the Court would not entertain the objection as to the competence of the Court with reference to its pecuniary limits. This aspect of the matter has not at all been considered by the lower appellate Court.

24. In *Sat Paul and Another Vs. Jai Bhan Ananta Saini*, decided prior to the amendment to Section 21 and only taking into consideration Section 11 of the Suits Valuation Act, a learned Single Judge of the Punjab and Haryana High Court held that without showing that any prejudice has been caused, the Appellate Court could not set aside the judgment only on the ground of the suit being improperly valued.

25. *Harshad Chiman Lal Modi Vs. DLF Universal and Another*, the Apex Court held as follows:

We are unable to uphold the contention. The jurisdiction of a Court may be classified into several categories. The important categories are (i) territorial or local jurisdiction; (ii) pecuniary jurisdiction; and (iii) jurisdiction over the subject matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject-matter, however, is totally distinct and stands on a different footing. Where a Court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a Court having no jurisdiction is a nullity.

26. The Apex Court further went on to hold that the Courts at Delhi did not have jurisdiction u/s 16 to decide the issue and, therefore, lacked inherent jurisdiction to decide the matter.

27. The then Hon^{ble} Chief Justice of this Court in *Ajay Singh (Since Deceased) through his Lrs. Meenakshi Singh and Others Vs. Tikka Brijendra Singh and Others*, considered this question in detail and after noting the provisions of Sections 21 and 99 of the CPC and Section 11 of the Suits Valuation Act held as follows:

A combined reading of the aforesaid three provisions of law clearly suggests, first and foremost that no objection as to the competence of a Court with reference to its pecuniary limits of jurisdiction shall be allowed unless there has been a consequential failure of justice, and secondly, that no decree shall be reversed or substantially varied etc. on account of any error etc. including an error of jurisdiction which does not affect the merits of the case and thirdly, no objection about the jurisdiction of a Court for over valuation or under valuation of a suit etc. shall be entertained by an Appellate Court unless, apart from the objection having been taken in the Court of first instance etc., the Appeal Court is satisfied for reasons to be recorded in writing that such overvaluation or under valuation has prejudicially affected the disposal of the suit by the trial Court.

28. In *Hasham Abbas Sayyad Vs. Usman Abbas Sayyad and Others*, , the Apex Court held as follows:-

24. We may, however, hasten to add that a distinction must be made between a decree passed by a Court which has no territorial or pecuniary jurisdiction in the light of Section 21 of the Code of Civil Procedure, and a decree passed by a Court having no jurisdiction in regard to the subject matter of the suit. Whereas in the former case, the appellate Court may not interfere with the decree unless prejudice is shown, ordinarily the second category of the cases would be interfered with.

29. It would be pertinent to mention that the Apex Court and this Court clearly laid down that so far as objections to the territorial and pecuniary jurisdiction are concerned, the objections must be taken at the earliest possible opportunity and order of the Court not having pecuniary jurisdiction cannot be said to be a nullity. The Court does not lack jurisdiction to decide such a dispute. It only does not have the pecuniary jurisdiction to decide the dispute. Therefore, if it entertains and tries the matter and decides these disputes then the learned Appellate Court cannot set aside its findings unless it comes to the conclusion that prejudice has been caused in terms of Section 11 of the Suits Valuation Act and consequent failure of justice in terms of Section 21(2) of the Code of Civil Procedure.

22. Confronted with the situation, learned counsel for the appellant then argued that in terms of Section 21 of the Code of Civil Procedure, he had raised the objection regarding the pecuniary jurisdiction of the learned trial Court immediately in his written statement and has been pursuing this plea throughout the litigation.

In this background, it is now necessary to advert to the written statement filed

by the appellant to note the precise manner in which the objection with respect to the jurisdiction has been taken. In this background, it is apt to reproduce paras 1 and 2 of the preliminary objections coupled with para 8 of the written statement on merits, which read as under:

1. The suit has not been properly valued for purposes of jurisdiction and court fees.

2. The suit is not competent in the present form. On bare reading of the plaint, it is a suit for possession of the land comprising in Khasra Numbers as given in the title of the suit. But the prayer clause prays for a decree of the premises standing on the above land. In view of this the suit should have been for possession of the building/premises standing on the land given in the plaint. It appears the suit has been filed for possession of land only, as given in the title of the suit simply to evade the payment of court fees. According to the law the building/premises has to be valued according to market value of the building/premises. The title of the suit is a misleading one and as such requires amendment.

8. Para No. 8 of the plaint is emphatically denied. The suit has been wrongly valued for purposes of court fees and jurisdiction only to evade payment of proper court fees.

23. A bare perusal of the contents of the written statement reproduced hereinabove, would show that the objection taken by the defendant was in fact directed against the court fees and did not even remotely question the pecuniary jurisdiction of the learned trial Court. This view of mine is further fortified from the tone, tenor and nature of the issue No. 5 framed by the learned trial Court, which reads as follows:

Whether the suit has not been properly valued for the purpose of court fee as alleged? OPD

24. Thus, it is clear from the language of this issue that the defendant/appellant never ever intended to question the pecuniary jurisdiction of the learned trial Court. At the same time, it would be necessary to note here that the issues in this case were framed on 12.8.1993 whereafter on 7.7.1994 an application was preferred by the appellant/defendant under Order 14 Rules 1 to 5 CPC for framing of additional issues and also for changing the burden of proof of issue No. 5 regarding valuation. It was claimed that it was the plaintiff who was legally bound to prove the value of the property for the purpose of court fee and jurisdiction. The following averments are contained in this application:

1. That the above suit is fixed for plaintiff's evidence for today the 7th day of July, 1994.

2. That the burden of proof of issue No. regarding valuation of the suit property has inadvertently been placed on the defendant. The plaintiff is legally bound to value the suit property properly for purposes of court fees and jurisdiction. The plaintiff has deliberately valued the suit property at Rs. 300/- for court fees +

jurisdiction only to evade the payment of court fees properly. The value of the suit property is lacs of rupees and can in no case be Rs. 300/-. This deliberate attempt of the plaintiff to evade the payment of proper court fees is not permissible under the law. Hence the burden of proof of the above issue should be on the plaintiff.

3. That the plaintiff has claimed the relief of mandatory injunction to remove the structure from over Kh. No. 5121/3 and some alleged wall but no issue could be framed, regarding the same.

4. That the issue of valuation of the suit under the law affects the whole trial of the suit and as such, has to be tried as a preliminary issue before any other issue in the case.

It is, therefore, prayed that the burden of proof of issue No. regarding the proper valuation of the suit may kindly be changed and placed on the plaintiff. Issue regarding mandatory injunction, whether the plaintiff is entitled to mandatory issue may kindly be framed and the issue of valuation be decided as the first issue in the case.

25. Again a perusal of the contents of the application (supra) would show that a desperate attempt was made by the appellant to compel the respondent to pay more court fee rather than question the pecuniary jurisdiction of the learned trial Court.

For completion of record, it may be observed that this application of the appellant was initially allowed by the learned trial Court on 25.11.1994 and the issue No. 5 was ordered to be treated as a preliminary issue. However, vide order dated 6.6.1995, the order dated 25.11.1994 was reviewed by assigning the following reasons:

6.6.1995: Present: Sh. S.L. Ranjita, Adv. Csl. For the plaintiff.

Sh. C.R. Chauhan, Adv. Csl. for the defendant.

Issue No. 5 has been treated as preliminary issue vide order dated 25.11.1994 and thereafter the suit has been fixed for the evidence of the parties. Since issue No. 5 is mixed question of law and facts and the parties have to lead evidence oral as well as documentary on this issue, which shall touch other issues as it will delay the disposal of the main suit, if the preliminary issue is decided first and thereafter the other issues are decided on which the parties have to lead evidence. Therefore, order dated 25.11.1994 is reviewed so as to decide all issues on merit. So, now to come up for plaintiff evidence on merit of the case on 9.8.1995 at Jubbal.

26. It is relevant to observe here that the order dated 25.11.1994 was permitted to attain finality as the appellant never challenged this order. In case the appellant was really serious to pursue his defence regarding lack of pecuniary jurisdiction of the learned trial Court, then it was incumbent upon him to have

challenged this order further.

27. As already observed hereinabove, the appellant in order to succeed on the question raised by him, has to prove (i) that because the learned trial Court lack pecuniary jurisdiction, prejudice has been caused to him; (ii) that prejudice has resulted in the failure of justice, because it is settled law that the judgment rendered by the Court lacking pecuniary jurisdiction cannot be reversed purely on technical grounds unless it has resulted in failure of justice.

28. After noticing the relevant provisions of law, this Court (Coram: V.K. Gupta, C.J. as his Lordship then was) vide a detailed judgment in *Ajay Singh (Since Deceased) through his Lrs. Meenakshi Singh and Others Vs. Tikka Brijendra Singh and Others*, , held as under:

....With reference to objections relating to territorial jurisdiction, Section 21 of the CPC enacts that no objection to the place of suing should be allowed by an appellate or revisional Court, unless there was a consequent failure of justice. It is the same principle that has been adopted in Section 11 of the Suits Valuation Act with reference to pecuniary jurisdiction. The policy underlying Sections 21 and 99, C.P.C. and Section 11 of the Suits Valuation Act is the same, namely, that when a case had been tried by a Court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an appellate Court, unless there has been a prejudice on the merits. The contention of the appellants, therefore, that the decree and judgment of the District Court, Monghyr, should be treated as a nullity cannot be sustained u/s 11 of the Suits Valuation Act.

28. Dwelling on the aspect relating to the causation of prejudice and as to what is the meaning of word "prejudice", their Lordships of the Supreme Court held as under:

That brings us to the question as to what is meant by "prejudice" in Section 11 of the Suits Valuation Act. Does it include errors in findings on questions of fact in issue between the parties? If it does, then it will be obligatory on the Court hearing the second appeal to examine the evidence in full and decide whether the conclusions reached by the lower appellate Court are right. If it agrees with those findings, then it will affirm the judgment; it does not, it will reverse it. That means that the Court of second appeal is virtually in the position of a Court of first appeal.

The language of Section 11 of the Suits Valuation Act is plainly against such a view. It provides that overvaluation or under-valuation must have prejudicially affected the disposal of the case on the merits. The prejudice on the merits must be directly attributable to over-valuation or under-valuation and an error in a finding of fact reached on a consideration of the evidence cannot possibly be said to have been caused by over-valuation or under-valuation. Mere errors in the

conclusion on the points for determination would therefore be clearly precluded by the language of the section.

It must further be noted that there is no provision in the Civil Procedure Code, which authorises a Court of second appeal to go into question of fact on which the lower appellate Court has recorded findings and to reverse them. Section 103 was relied on in *Ramdeo Singh and Others Vs. Raj Narain Singh and Another*, as conferring such a power. But that section applies only when the lower appellate Court has failed to record a finding on any issue, or when there has been irregularities or defects such as fall u/s 100, CPC. If these conditions exist, the judgment under appeal is liable to be set aside in the exercise of the normal powers of a Court of second appeal without resort to Section 11 of the Suits Valuation Act. If they do not exist, there is no other power under the CPC authorizing the Court of second appeal to set aside findings of fact and to re-hear the appeal itself on those questions.

We must accordingly hold that an appellate Court has no power u/s 11 of the Suits Valuation Act to consider whether the finding of fact recorded by the lower appellate Court are correct, and that error in those findings cannot be held to be prejudice within the meaning of that section.

So far, the definition of "prejudice" has been negative in terms that it cannot be mere change of forum or mere error in the decision on the merits. What then is positively prejudice for the purpose of Section 11? That is a question which has agitated Courts in India ever since the enactment of the section. It has been suggested that if there was no proper hearing of the suit or appeal and that had resulted in injustice, that would be prejudice within Section 11 of the Suits Valuation Act. Another instance of prejudice is when a suit which ought to have been filed as an original suit is filed as a result of under-valuation on the small cause side. The procedure for trial of suits in the Small Cause Court is summary, there are no provisions for discovery or inspection; evidence is not recorded "in extenso", and there is no right of appeal against its decision. The defendant thus loses the benefit of an elaborate procedure and a right of appeal which he would have had, if the suit had been filed on the original side. It can be said in such a case that the disposal of the suit by the Court of Small Causes has prejudicially affected the merits of the case.

No purpose, however, is served by attempting to enumerate exhaustively all possible cases of prejudice which might come u/s 11 of the Suits Valuation Act. The jurisdiction that is conferred on appellate Courts under that section is an equitable one, to be exercised when there has been an erroneous assumption of jurisdiction by a Subordinate Court as a result of over-valuation or under-valuation and a consequential failure of justice. It is neither possible nor even desirable to define such a jurisdiction closely, or confine it within stated bounds. It can only be predicated of it that it is in the nature of a revisional jurisdiction to be exercised with caution and for the ends of justice, whenever the facts and situations call for it. Whether there has been prejudice or not, is, accordingly, a

matter to be determined on the facts of each case...

29. In para 17 of the same judgment, it was held by their Lordships that Clauses (a) and (b) of sub-section (1) of Section 11 have to be read conjunctively, even though the word "or" has been used between these two clauses.

30. In the face of the aforesaid binding proposition of law and based upon this authoritative pronouncement by the Apex Court, without going into the question whether in fact the suit was undervalued or not, I overrule the objection raised by Shri K.D. Sood and hold that since neither any prejudice has been alleged to have been caused nor has any prejudice actually been caused nor has any party been prejudicially affected with respect to the disposal of the suit nor has alleged under-valuation of the suit affected the merits of the case, there is no merit in the preliminary objection of Mr. K.D. Sood....

29. The findings recorded by the learned lower Appellate Court on the question of valuation of the property is pure finding of fact which cannot be interfered with in the present appeal. Even otherwise, even if it is assumed that the subject matter of the suit was more than Rs. 50,000/- i.e. beyond the pecuniary jurisdiction of the learned trial Court even then the appellant has failed to show as to how and in what manner prejudice has been caused to him and how the same has resulted in failure of justice.

30. The learned counsel for the appellant has not been able to convince me as to how the procedure adopted by the learned lower Appellate Court was wrong or not in accordance with law while determining the suit for purposes of court fee and jurisdiction. Even for the sake of repetition, I may point out that the emphases of the appellant have throughout been on question of Court fees rather than questioning the pecuniary jurisdiction and therefore now the appellant cannot be permitted to carve out a case when none exists.

Substantial question of law No. 3:

31. In so far as the question regarding judicial discretion of the learned Additional District Judge, Shimla to extend the time period for payment of court fees by another two months is concerned, no fault can be found with the order passed by the learned lower Appellate Court as the same had been passed in compliance with the directions passed by this Court whereby he had been granted the liberty to extend the time for filing the court fees as would be clear from the judgment dated 13.6.2011 passed by this Court (Coram: Deepak Gupta, J.) in RSA No. 135 of 2000 which reads as under:

5. As far as the main appeal is concerned, in view of the direction of the learned lower Appellate Court the suit of the plaintiff stands dismissed and therefore, the present appeal is infructuous and is disposed of accordingly. It is, however, made clear that in case the learned lower Appellate Court holds that the application for extension of time for making good the deficiency in the Court fees is maintainable and also extends the time in filing the Court fees then the appellant-

defendant shall be at liberty to file a fresh appeal and in such appeal he can take up all grounds including the grounds taken in this appeal. The appeal is disposed of in the aforesaid terms. No costs.

The question of passing fresh judgment and decree did not arise as limited question on which the case had been sent back after remand to the learned lower Appellate Court was contained and specified in para-5 (supra) of the judgment.

Substantial question of law No. 6:

32. The learned counsel for the appellant contended that since a permanent license u/s 60 of the Easement Act had been created in favour of his predecessor, therefore, the appellant had every right to continue enjoying the property. He in support of his contention has referred to the judgment of the Hon"ble Supreme Court in Ram Sarup Gupta (Dead) by Lrs. Vs. Bishun Narain Inter College and Others, wherein it has been held as under:

10. In their pleadings the defendants had invoked the protection of both the clauses of S. 60 of the Act, firstly, they pleaded that the licence was coupled with the transfer of property inasmuch as the school had been realising rent from third parties who were permitted to use a portion of the land. Secondly, they pleaded that the licensee, namely, the school had executed permanent constructions and incurred expenses in execution thereof acting on the license. The trial Court as well as the High Court both rejected the respondents' claim of license being irrevocable u/s 60(a) of the Act. But they upheld the respondents plea of license being irrevocable under Cl. (b) of S. 60 of the Act. It is true that the pleadings raised in the written statement of defendants did not expressly use the expression that the school had executed work of permanent character "acting upon the license". But reading the entire written statement one cannot escape the conclusion that the defendants had raised the plea that Raja Ram Kumar Bhargava the grantor of the license had granted license for running the school in the building and for using the open land for the purpose of school and in pursuance of the license, so granted, the school had executed work of permanent character and incurred expenses in making the same. The defendants further pleaded that no objection had been raised by the grantor of the license or by anyone else against the school in making the constructions. Repeated assertions have been made in their written statement that Raja Ram Kumar Bhargava had granted a permanent license which was irrevocable. Substance of the pleading was clear that defendants had raised a specific plea that the school had in pursuance of the license executed work of permanent character and incurred expenses in execution and that no objection was raised by the licenser therefore the license was irrevocable. The license had been granted to the school for the purpose of running school and imparting education to the students, the license was not merely in respect of building alone but it was also in respect of open land attached to the building. Additional accommodation was required to provide class rooms for the students which was an integral part of the purpose for which

the license had been granted and the school carried out works on the open land which was appurtenant to the main building, with the knowledge of the licensor as has been found by the trial Court and the High Court. In view of the licensor's donation of the property to the school, and his subsequent conduct, the licensee could reasonably entertain a belief that the licensor had permitted the construction on the land, and in pursuance thereof, the licensee made constructions and incurred expenses. The result is that the respondents "acting upon the licensee" had executed works by incurring expenses which rendered the license irrevocable. As regard evidence we have perused the statement of Ganga Prasad Dhayani, DW-1, Shanker Dutt, DW-2, and Bhola, DW-3. Their testimony fully established that the school had constructed three class rooms, latrine and urinals and incurred expenses. Raja Ram Kumar Bhargava in his testimony claimed that the aforesaid constructions had been made by a trust constituted by his family members, but no account books were filed in support of the statement, although it was admitted that the trust maintained accounts on the other hand vouchers were produced on behalf of the defendants showing that the management had spent money for making constructions. Raja Ram Kumar Bhargava who was examined as a witness on behalf of the plaintiff admitted in his testimony that he continued to be the president of the school since 1938 to 1961 and thereafter his wife has continued to be the president, it is therefore, difficult to believe that he had no knowledge of the constructions. If the license did not permit the school to execute any permanent constructions, Raja Ram Kumar Bhargava would have certainly raised objections. His conduct of acquiescence to the raising of constructions is eloquent enough to show that the license was irrevocable. No doubt Raja Ram Kumar made attempts to support the plaintiff's case by saying that he had not given the property to the school permanently but the trial Court and the High Court both have discarded his testimony and we find no good reason to take a different view.

33. There is no quarrel with the legal proposition laid down in the aforesaid case, but in this case this question has been raised for the first time in the present appeal. That apart there is no factual foundation for such a plea. Once this is the position, the appellant cannot be permitted to raise this question, that too for the first time before this Court. The appellant having based his entire case on the plea of ownership cannot be permitted to turn around and claim that he is a permanent licensee over the property in dispute as these are mutually destructive pleas.

Substantial question of law No. 7:

34. The learned counsel for the appellant vehemently contended that proper issues had not been framed which has vitiated the findings recorded by not only the learned trial Court but even the learned Appellate Court. He has stressed that the learned trial Court never framed an issue regarding the creation of a permanent license in favour of the predecessor-in-interest of the appellant and did not even care to frame the issue regarding grant and permission to carry out

the construction and repairs by the respondent which obviously was within his knowledge and consent thereby making the license irrevocable.

Now obviously the appellant is trying to catch at a straw and is practically indulging in the policy of dog in the manger by seeing that the hanging sword of the present litigation lingers on so that at some future time the respondent may come around and may give some added advantage to the appellant by way of bargain and if the present proceedings are prolonged, such oblique intention of the appellant may get fructified.

This court cannot be a party to such a design. The appellant has been enjoying the usage and usufruct of the property for the last more than two decades that too without paying a single paisa on account of such user and for reaping the usufruct. This Court has already concluded in answer to question No. 6 that the defendant/appellant was not entitled to claim his status to be that of a permanent licensee after having taken the plea of ownership and therefore no issue in this regard was required to be framed.

35. The learned trial Court as also the learned lower Appellate Court have correctly appreciated the oral and documentary evidence available on record. The learned lower Appellate Court has not only agreed with the findings recorded by the learned trial Court but has discussed in detail the pleadings of the parties and appreciated afresh the entire evidence led by the parties even though, there was no requirement of law to re-state the effect of the evidence or reiterate the reasons given by the trial Court and even an expression of general agreement with reasons given by the trial Court which was under appeal would have ordinarily sufficed as held by the Hon''ble Supreme Court in Santosh Hazari Vs. Purushottam Tiwai (Dead) by Lrs., as under:

15. A perusal of the judgment of the trial Court shows that it has extensively dealt with the oral and documentary evidence adduced by the parties for deciding the issues on which the parties went to trial. It also found that in support of his plea of adverse possession on the disputed land, the defendant did not produce any documentary evidence while the oral evidence adduced by the defendant was conflicting in nature and hence unworthy of reliance. The first appellate court has, in a very cryptic manner, reversed the finding on question of possession and dispossession as alleged by the plaintiff as also on the question of adverse possession as pleaded by the defendant. The appellate Court has jurisdiction to reverse or affirm the findings of the trial Court First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate Court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate Court. The task of an appellate court affirming the findings of the trial Court is an easier one. The appellate court agreeing with the view of the trial court need not restate the effect of the evidence or reiterate the reasons given by the trial

court; expression of general agreement with reasons given by the court, decision of which is under appeal, would ordinarily suffice (See *Girja Nandini Devi and Others Vs. Bijendra Narain Choudhury*,). We would, however, like to sound a note of caution. Expression of general agreement with the findings recorded in the judgment under appeal should not be a device or camouflage adopted by the appellate court for shirking the duty cast on it. While writing a judgment of reversal the appellate court must remain conscious of two principles. Firstly, the findings of fact based on conflicting evidence arrived at by the trial court must weigh with the appellate court, more so when the findings are based on oral evidence recorded by the same Presiding Judge who authors the judgment. This certainly does not mean that when an appeal lies on facts, the appellate court is not competent to reverse a finding of fact arrived at by the trial Judge. As a matter of law if the appraisal of the evidence by the trial Court suffers from a material irregularity or is based on inadmissible evidence or on conjectures and surmises, the appellate court is entitled to interfere with the finding of fact. (See *Madhusudan Das Vs. Smt. Narayanibai (Deceased) by Lrs. and Others*,). The rule is-and it is nothing more than a rule of practice-that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judge's notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lie, the appellate court should not interfere with the finding of the trial Judge on a question of fact. (See *Sarju Pershad Vs. Raja Jwaleshwari Pratap Narain Singh and Others*,). Secondly, while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate Court had discharged the duty expected of it. We need only remind the first appellate courts of the additional obligation cast on them by the scheme of the present Section 100 substituted in the Code. The first appellate Court continues, as before, to be a final court of facts; pure findings of fact remain immune from challenge before the High Court in second appeal. Now the first appellate court is also a final court of law in the sense that its decision on a question of law even if erroneous may not be vulnerable before the High Court in second appeal because the jurisdiction of the High Court has now ceased to be available to correct the errors of law or the erroneous findings of the first appellate court even on questions of law unless such question of law be a substantial one.

36. In view of above discussion, all the substantial questions of law are answered accordingly.

37. Resultantly, in view of my aforesaid discussion, I find no merit in this appeal and the same is dismissed with costs throughout. The pending application, if any, also stands disposed of.