*Before M.M. Kumar, J*

MALKHAN SINGH AND ANOTHER,—*Plaintiff/Appellants*

versus

DEEP CHAND AND ANOTHER,—*Respondents*

R.S.A. NO. 1527 OF 1999

19th January, 2005

*Code of Civil Procedure, 1908—Ss. 100 and 103—Sanction of mutation in favour of respondent No. 2 on the basis of judgment and decree suffered by his father—Consequently sanction of mutation in favour of respondent No. 1 on the basis of another judgment and decree subsequently suffered by father of respondent No. 2—Execution of sale deed and a perpetual lease deed by respondent 2 in favour of appellants—Revenue authorities declining to sanction mutation in favour of appellants—Challenge thereto—Both the Courts below rejecting suit of appellants on the plea that they failing to establish connection of suit land with the land mentioned in judgment and decree passed in favour of respondent No. 1—Concurrent findings of fact by both the Courts below—Whether High Court has jurisdiction to interfere in such findings of fact—Held, yes—If such findings suffer from perversity—Courts below failing to appreciate the documents—Documentary evidence showing the identity of the land common between the suit land and the land mentioned in the judgment and decree passed in favour of respondent No. 1—Findings of the Courts below contrary to the observations made in the documents—Appeal allowed and findings of both the Courts below set aside while decreeing the suit of the plaintiff—appellants.*

*Held,* that the High Court will not ordinarily interfere in concurrent findings of facts recorded by both the Courts below. However, there is no blanket bar on the power of the High Court to interfere in such findings of facts provided the findings are found to be perverse. If a document has been left out of consideration or misread and the findings are vitiated then it would be a substantive question of law. Once this Court comes to the conclusion that the Courts below have failed to appreciate the documents and have not referred to those documents resulting into findings which are contrary to the observations made in the documents then such be finding has to a considered as perverse.

(Paras 11 and 13)

*Further held,* that the Courts below have failed to take into consideration the fact that the judgment and decree dated 20th September, 1984 was got mutated by defendant—respondent No. 1 from the revenue authorities in respect of Rect. No. 116 (0—13M). The afore-mentioned factual position deserves to be considered in the light of the statement made by defendant—respondent No. 1. In his cross-examination he has admitted that he has constructed a room in Rect. No. 116 and the boundaries in the judgement and decree dated 20th September, 1984 were mentioned instead of the revenue numbers as at that time he was not aware of the numbers. Obviously on the basis of the afore-mentioned statement, mutation has been sanctioned in respect of Rect. No. 116 (0—13M) as is evident from Ex. PW 9/A. The documents although have been mentioned by the Courts below but no finding has been recorded by reading the mutation Ex. PW 9/A, dated 2nd December, 1988. In paras 1, 4(ii) and 5 reference has been made to the jugement and decree dated 20th September, 1984 and the mutation No. 1176 dated 2nd December, 1988. Even an issue has been framed on the basis of the afore-mentioned documents. However, there is a fundamental error in reading the afore-mentioned document which has resulted in manifest injustice to the plaintiff—appellant because the Courts below have recorded a finding that identity of the land has not been established whereas there is ample evidence in the form of Ex. PW 9/A reflecting the sanctioning of mutation in respect of Rect. No. 116(0—13M) as a Gair Marusi Abadi Land and the same land has been claimed by the plaintiff—appellants. Therefore, the finding of both the Courts below on issue No. 1 deserves to be set aside.

(Para 20)

Vikas Kumar, Adocate, *for the appellants.*

Rajiv Sharma, Advocate, *for the respondents.*

**JUDGMENT**

**M.M. KUMAR, J.**

(1) This is plaintiffs second appeal filed under Section 100 of the Code of Civil Procedure, 1908 (for brevity the Code) challenging concurrent findings of facts recorded by both the Courts below. A short question that arises for consideration is as to whether the findings recorded by the Courts below on the issue concerning identity of land

are vitiated on account of categorical documentary evidence in the form of mutation Ex. PW 9/A which clearly establishes the identity of the suit land.

**BRIEF FACTS :**

(2) One Jaggan was owner and in possession as co-sharer/ joint owner of the land to the extent of 1/2 share bearing Khewat No. 11-12 Khatoni No. 17-18, Rect. No. 116 (0—13) Ghir Mumkin Abadi and Khewat No. 10 Khatoni No. 14 Rect. No. 117(1—3 Marlas) situated in Village Mandhawali, Tehsil Ballabgarh. He had a son named Khacheru, Jaggan suffered a judgement and a decree in his favour on 30th October, 1980 (Exs. P.3 and P.4). The judgement and decree Exs. P.3. and P.4 led to sanction of mutation in favour of the son, Khacheru which is Ex. P.6. Subsequently Jaggan again suffered a judgement and decree Exs. P.8. and P.9 dated 20th September, 1984 in favour of defendant—respondent Deep Chand which led to the sanctioning of mutation in his favour being Exs. PW.9/A dated 2nd December, 1988.

(3) On the basis of his right which accrued from the judgement and decree Exs. P.3. and P.4 dated 20th October, 1980 Khacheru executed a sale deed and a perpetual lease deed for 99 years in favour of the plaintiff—appellants which are dated 30th November, 1993. Exs. P.2. and P.1 respectively. When the plaintiff—appellant approached the revenue authorities with a prayer for sanctioning of mutation in their favour it was declined on the ground that mutation stood entered in favour of Deep Chand defendant—respondents Exs. PW. 9/A dated 2nd December, 1988. As a result thereof the plaintiff appellants who are the vendees of the suit land from Khacheru filed a suit for declaration to the effect that the judgement and decree dated 20th September, 1984 Exs. P. 8 and P. 9 alongwith mutation sanctioned in favour of defendant—respondent No. 1 dated 2nd December, 1988 Ex. PW 9/A were null and void and that those were not binding on the plaintiff—appellants. In the plaint, numerous pleas were set up by the plaintiff—appellant in support of the basic contention that the judgement and decree dated 20th September, 1984 passed by the Sr. Sub Judge, Faridabad in Civil Suit No. 52 of 1984 and the consequential mutation Ex. PW 9/A dated 2nd December, 1988 were null and void and that those were not binding on their rights. The

principal ground pleaded was that Jaggan father of Khacheru had already suffered a judgement and decree in favour of Khacheru defendant—respondent No. 2 on 30th October, 1980 Ex. P.3 and P.4 and mutation No. 1003 Ex. P.6 was sanctioned in his favour on 29th December, 1986. It was further asserted that once a judgement and decree dated 30th October, 1980 were suffered by Jaggan in favour of Khacheru then he could not have suffered another judgement and decree Exs. P.8 and P.9. It was further claimed that the judgement and decree passed earlier would prevail over the judgement and decree passed later. On that basis mutation sanctioned in favour of defendant—respondent No. 1 Ex.PW.9/A was also challenged.

(4) In the written statement, defendant—respondent No. 1 broadly denied the assertions made by the plaintiff—appellant. It was claimed that the judgement and decree dated 20th September, 1984 Ex. P.8 and P.9 and the mutation dated 2nd November, 1988 was very much in the knowledge of the plaintiff—appellant and therefore, they were not entitled to the relief claimed in the suit. A replication was also filed by the plaintiff—appellant to the written statement filed by the defendant—respondent No. 1 reiterating the assertions made in the plaint. It is pertinent to mention that defendant—respondents desipte service did not appear and were proceedced *ex parte*.

(5) On the basis of the pleadings of the parties, five issues were framed. However, issue No. 1 is pivotal to decide the controversy raised before me which is as under :

> "Whether the civil decree dated 20th September, 1984 passed in Civil Suit No. 52 of 1984 and mutation sanctioned in pursuance of the said decree in the relevant record bearing No. 1176 are null and void ? OPP."

**Views of the Trial Court and Appellate Court :**

(6) The Trial Court dismissed the suit of the plaintiff-appellants by observing that although the plaintiff-appellants have proved the judgement and decree dated 30th October, 1980 in respect of the suit land in favour of their vendor as well as the sale deed and perpetual lease deed Exs. P.1 and P.2, dated 30th November, 1993 but they have failed to connect the suit land with the judgement and decree dated 20th September, 1984 Ex. P.8 and P.9 and the mutation Ex. PW 9/ A. On that ground the relief claimed was declined although it was

accepted that if the plaintiff-appeallants were able to connect the suit land with the aforementioned two documents then their suit deserved to be decreed. The findings of the Trial Court on the aforementioned issue reads as under :—

> "The plaintiffs although undoubtedly have proved the Civil Court decree dated 30th October, 1980 in respect of the suit land in favour of Khacheru and the sale deed and lease deed which are Ex. P.2 and Ex. P.1 since these documents mention in conformity the suit land word to word whereas since the suit property decreed in favour of Deep Chand,—*vide* judgement dated 20th September, 1984 does not connect the suit land, it cannot be said that this civil court decree pertains to the suit land and, therefore, since the plaintiffs have failed to form connection, it cannot be said that since already a decree in favour of Khacheru had been executed by Jaggan in respect of suit land, a later decree could not be executed by same Jaggan in favour of Deep Chand in respect of the same land. Only if connection of the property mention in the Civil Court decree dated 20th September, 1984 with the suit land could be established by the plaintiff, it could have been said that the later decree is null and void. Since there is no connection, it cannot be said that Civil Court decree dated 20th September, 1984 and the mutation sanctioned in pursuance of it is null and void because it could pertain to some other property other than the suit land, However, the lease deed and sale deed which are Exs. P.1 and P.2 pertains to the suit land shall be perfectly valid since Khacheru was entitled to transfer the suit land in favour of the plaintiffs in respect of the civil decree dated 30th October, 1980."

(7) The appeal filed by the plaintiff-appellants alongwith an application under Order XLI Rule 27 C.P.C. was dismissed by upholding the finding recorded by the learned Trial Court on the ground that the plaintiff-appellants did not prove the connection between the suit properly with the property which was subject-matter of judgement and decree dated 20th September, 1984 Ex. P.8 and P.9 and the mutation dated 2nd November, 1988 Ex. PW 9/A. The application for

adducing additional evidence by the appointment of a Local Commissioner was also dismissed. In this regard the views of the learned. Appellate Court are discernible from paras 11, 12 and 13 which reads as under :—

> "Learned counsel for the appellants has also filed an application u/o 41 rule 27 for additional evidence by way of appointment of local commissioner. It is mentioned in the application that in view of the lower court finding they failed in connecting the suit property with the property mentioned in the decree dated 20th September, 1984, which is under challenge. It is their prayer in the application that it is essential to demarcate and locate the suit property cited in the decree dated 20th September, 1984 by appointment of local commissioner.
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> Since, the appellants/plaintiffs remained unsuccessful to connect the suit property with the property in question comprised in the decree dated 20th September, 1984 inspite of their due diligence, they prayed that a local Commissioner be appointed to demarcate the property in question comprised in Khasra No. 116.
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> A bare perusal of the grounds mentioned by the appellants in their said application dated 18th January, 1999 filed in this Court itself indicates that the finding of the learned lower court has been conceded by them. The suit property could not be connected by them with the property comprised in the decree under challenge dated 20th September, 1984.

**Rival Contentions :**

(8) Shri Vikas Kumar, learned counsel for the plaintiff-appellants has argued that there is inherent evidence available on the record showing the identity of the Abadi Deh Gair Mumkin land which comprised in Rect. No. 116 measuring 0—13 marlas and that it common between suit land and the one which was subject matter of sale deed and the lease deed Ex. P.2 and P.1 respectively. The learned counsel has referred to Ex. PW.9/A at page 83 of the record of the Trial Court and also the statement of defendant-respondent No. 1 Deep Chand. According to the learned counsel the mutation Ex. PW.9/A dated 2nd December, 1988 clearly indicates that the judgement and decree

dated 20th September, 1984 was entered in the revenue record for sanctioning mutation in respect of Rect. No. 116 (0—13 marlas) which is described as Gair Mumkin Abadi Deh. Referring to the statement made by Deep Chand DW 1, the learned counsel thas pointed out that there is an admission made by him with regard to the identity of the suit land when he stated that the judgement and decree dated 20th September, 1984 Ex. P.8 and P.9 is in respect of Rect. No. 116 (0—13 marlas). The learned counsel has also drawn my attention to para 1 of the plaint wherein the land in dispute has been described as Gair mumkin Abadi and it is comprised in Rect. No. 116 (0—13). Referring to the pleadings of the plaintiff-appellants in paras 4 and 5 of the plaint, the learned counsel has then argued that a bare perusal of mutation No. 1176, dated 2nd December, 1988 Ex. PW 9/A indicates that it is in respect of Rect. No. 116 (0—13) Gair Mumkin Abadi. The learned counsel has referred to the views taken by the trial Court on issue No. 1 and argued that there is a complete non reading or mis-reading of the judgement and decree dated 20th September, 1984 Exs. P.8 and P.9 in the light of the mutation No. 1176, dated 2nd November, 1988 Ex. PW 9/A which clearlyh establishes the identity of the land and connect it with the suit land as described in the plaint.

(9) Substantiating his argument, learned counsel for the plaintiff-appellants has also pointed out that once this Court takes a view that the findings are vitiated being perverse as the entry in mutation PW 9/A has not been appreciated by the Courts below then there is no impediment for this Court to exercise jurisdiction under Section 100 of the Code. He has made reference to the judgement of the Supreme Court in the case of **Kulwant Kaur and others** *versus* **Gurdial Singh Mann and others (1) and Yadarao Dajiba Shrawane** *versus* **Nanilal Harakchand Shah and others (2).** Learned counsel has also made reference to the provisions of Sections 103, 107 and Order XLI Rule 43 and submitted that this Court is clothed with wide powers to administer complete justice and record a finding which the Court of original jurisdiction like the Civil Court could exercise while deciding the suit. In support of the aforementioned submission, the learned counsel has made reference to the

(1) 2001 (4) S.C.C. 262
(2) 2002 (6) S.C.C. 404

judgement of the Supreme Court in the case of **Ashwin Kumar K, Patel** *versus* **Upendra J. Patel (3)** and a judgement of the Kerala High Court in the case of **Sreenivasan** *versus* **Thilakan (4).**

(10) Shri Rajiv Sharma, learned counsel for the defendant-respondent No. 1 has vehemently argued that in the plaint there is no mention of any room or construction which are the subject matter of judgement and decree dated 20th September, 1984 Exs. P.8 and P.9. He has drawn my attention to the afore-mentioned judgement at page 39 of the record of the trial Court and argued that the bounderies given in the heading of the judgement and decree clearly shows that a declaration was sought by defendant-respondent No. 1 that he was the owner in possession of a residential pucca house having two rooms and open space in the abadi of village Manjwali, Tehsil Ballabgarh, District Faridabad. On the afore-mentioned basis, the learned counsel has argued that it has been rightly held by the Courts below that the plaintiff-appellant have failed to establish the any connection of the suit land with the judgement and decree P.8 and P.9. Learned counsel has also referred to the application for adducing of additional evidence under Order XLI Rule 27 of the Code wherein failure of the plaintiff-appellants to establish the connection of the land in dispute to the judgement and decree dated P. 8 and P. 9 is admitted. In support of his submission, the learned counsel has placed reliance on a judgement of this Court in the case of **M/s Goel Engineer (India)** *versus* **Haryana State Electricity Board (5)** and argued that once there are concurrent findings of facts recorded by both the Courts below then this Court should not adopt the course of unsetting those findings by re-appreciating evidence. He has then pointed out that the argument sought to be raised in this appeal has never been raised before the Courts below and therefore for the first time the said argument cannot be permitted to be raised. He has drawn my attention to the various judgements quoted in para 4 of the judgement in the case of **M/s Goel Engineer** *(Supra).*

(11) Before embarking upon the controversy raised it would be necessary to determine the scope of Jurisdiction of this Court as envisaged under Section 100 of the Code. It is true that this Court will not ordinarily interfere in concurrent findings of facts recorded by both the Courts below, However, there is no blanket bar on the

(3) 1999 (3) S.C.C. 161
(4) 2003 (3) C.C.C. 294
(5) 2003 (4) R.C.R. (Civil) 627

power of this Court to interfere in such findings of facts provided the findings are found to be perverse. The afore-mentioned principles have been reiterated by the Supreme Court in the case of **Hafazat Hussain** *versus* **Abdul Majeed and others (6).** In para 8 of the judgement their Lordships speak of permissibility to interfere in the concurrent findings of facts and proceeded to observe as under :—

> "We have carefully considered the submissions of the learned counsel appearing on either side. No doubt, it has been repeatedly pointed out by this Court that concurrent findings recorded by the trial Judge as well as the 1st Appellate Judge on proper appreciation of the materials on record should not been disturbed by the High Court, while exercising second appellate jurisdiction, but at the same time, it is not an absolute rule to be applied universally and invariably since the exceptions to the same also were often indicated with equal importance by this Court, and instances are innumerable where despite such need and necessity warranting such interference, if the second appellate court mechanically declined to interfere, the matter has been even relegated by this Court to the second appellate Court to properly deal with the claims of parties in the second appeal objectively keeping in view the parameters of consideration for interference under Section 100 of the Civil Procedure Code. Therefore, it becomes necessary to see whether the learned Single Judge in the High Court has transgressed the permissible limits." (emphasis supplied).

(12) The Supreme Court after discussing the evidence in detail found that the interference in the concurrent findings of facts by IInd Appellate Court was necessary because of serious illegalities and infirmities. The exercise of jurisdiction under Section 100 of the Code was also found to be necessary to prevent total miscarriage of justice. The observations of their Lordship in para 9 in so far relevant to the issue read as under :—

> "The IInd Appellate Judge was able to indicate and highlight the serious infirmities and illegalities committed by the learned trial Judge as well as the Ist Appellate Judge, and

(6) (2001) 7 S.C.C. 189

the necessity for his interference to prevent total miscarriage of justice, with convincing reasons. The findings recorded by the trial Court as well as the first appellate court were shown to be not only vitiated due to perversity of reasoning, but also due to surmises and misreading of the materials on record. On a careful and critical scanning—through of the judgement in the second appeal, we are unable to agree with the learned counsel for the appellant that any findings of fact concurrently recorded were mechanically interfered with without justification or by transgressing the limitations on the exercise of jurisdiction under Section 100 CPC. The reasons assigned by the learned Judge in the High Court for the conclusions arrived at do not suffer from any infirmity warranting our interference in this appeal. The appeal, therefore, fails and shall stand dismissed. The parties shall bear their own costs."

(13) It is also well settled that if a document has been left out of consideration or misread and the findings are vitiated then it would be a substantive question of law. Once this Court comes to the conclusion that the Courts below have failed to appreciate the documents and have not referred to those documents resulting into findings which are contrary to the observations made in the documents then such a finding has to be considered as perverse. In this regard, the views expressed by the Supreme Court in the case of Kulwant Kaur *(supra)* are relevant and the ratio is discernible from para 33 which read as under :—

"Referring to the above conspectus of the matter, Mr. Mehta contended that the High Court could not, in the absence of substantial question of law interfere with the findings of the lower Appellate Court which has otherwise the authority and jurisdiction to scrutinise and appraise the evidence. Mr. Mehta contended that suspicious features of the Will, are mere questions of fact which can be gone into upto the stage of first Appellate court only and not beyond and the High Court in the absence of a substantial question of law framed by the parties or if not so framed by the Court itself, had no jurisdiction to entertain the

appeal far less allowing it and it is an interference which is totally unauthorised or in excess of jurisdiction or having no jurisdiction whatsoever. We are however, not in a position to lend concurrence to such a broad proposition as enunciated by Mr. Mehta. Judicial approach being justice oriented, exclusion of jurisdiction of the High Court under the circumstances as contended by Mr. Mehta, would lead to an incongruous situation being opposed to the concept of justice. Technicality alone by itself ought not to permit the High Court to decide the issue since justice oriented approach is the call of the day presently. The learned Single Judge in the matter under consideration has delved into the issue as to whether infact the evidence on record warrant such a conclusion—whether the High Court was right in such appreciation or not—that is entirely a different issue. But the fact remains that scrutiny of evidence will be totally prohibited in the matter of exercise of jurisdiction in second appeal would be too broad a proposition and too rigid an interpretation of law not worthy of acceptance. If the concept of justice so warrant, we do not see any reason why such an exercise would be deprecated. This is however, without expression of any opinion pertaining to Section 100 of the Civil Procedure Code."

(14) It is also settled by a catena of judgements that even concurrent findings are liable to be interfered with when an important piece of evidence in the nature of an admission has been overlooked by the Courts below. In that regard reliance can be placed on para 31 of the judgement of the Supreme Court in the case of Yadarao Dejiba Shrawane *(supra)* which reads as under :—

"From the discussions in the judgement it is clear that the High Court has based its findings on the documentary evidence placed on record and statements made by some witnesses which can be construed as admissions or conclusions. The position as is well settled that when the judgment of the final court of fact is based on misinterpretation of documentary evidence or on

consideration of inadmissible evidence or ignoring material evidence the High Court in second appeal is entitled to interfere with the judgement. The position is also well settled that admission of parties or their witnesses are relevant pieces of evidence and should be given due weightage by Courts. A finding of fact ignoring such admissions or concessions is vitiated in law and can be interfered with by the High Court in second appeal. Since the parties have been in litigating terms for several decades, the records are voluminous. The High Court as it appears from the judgement, has discussed the documentary evidence threadbare in the light of law relating to their admissibility and relevance."

(15) Similar view has been taken by the Supreme Court in the case of **Deva *versus* Sajjan Kumar (7).** The relevant observations of their Lordships read as under :—

"7. The learned Senior Counsel appearing for the respondent—plaintiff supported the judgement of the High Court. It is submitted that since very important piece of evidence in the nature of admission of the defendant had been overlooked by the courts below and thus the suit was wrongly dismissed on the ground of limitation, there was full justification for the High Court in second appeal to reverse the judgements of the courts below.

8. Since a doubt arose with regard to the content and effect of the alleged admission of the defendant in the witness box, we directed the parties to supply translated copies of the depositions of the witnesses recorded in the trial Court. The necessary copies of the depositions were not available with the counsel. We have, therefore, requisitioned the record of the trial Court. On looking into the record, we find that the High Court was right in interfering with the judgements of the courts below on the basis of admission contained in the statement of the defendant. It clearly negatives his case of being in adverse possession of the encroached portion of the land from the year 1940."

(7) (2003) 7 S.C.C. 481

(16) I am further of the view that Section 103 of the Code clothe this Court with ample powers to interfere in the findings of facts if such findings suffer from perversity. Emphasising this aspect by referring to Section 103 in **Kulwant Kaur's case** *(supra)* their Lordships in para 34 observed as under :—

> "Admittedly, Section 100 has introduced a definite restriction on to the exercise of jurisdiction in a second appeal so far as the High court is concerned. Needless to record that the Code of Civil Procedure (Amendment) Act, 1976 introduced such an embargo for such definite objectives and since we are not required to further probe on that score, we are not detailing out, but the fact remains that while it is true that in a second appeal a finding of fact, even if erroneous, will generally not be disturbed but where it is found that the findings stand vitiated on wrong test and on the basis of assumptions and conjectures and resultantly there is an element of perversity involved therein, the High Court in our view will be within its jurisdiction to deal with the issue. This is, however, only in the event such a fact is brought to light by the High Court explicitly and the judgement should also be categorical as to the issue of perversity vis-a-vis the concept of justice. Needless to say however, that perversity itself is a substantial question worth adjudication—what is required is a categorical finding on the part of the High Court as to perversity. In the context reference be had to Section 103 of the Code which reads as below :
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> "103. In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal,—
>
> (a) Which has not been determined by the lower appellate court or by both the court of first instance and the lower appellate court, or
>
> (b) which has been wrongly determined by such court or courts by reason of a decision on such question of law as is referred to in Section 100."

The requirements stand specified in Section 103 and nothing short of it will bring it within the ambit of Section 100 since the issue of perversity will also come within the ambit of substantial question of law as noticed above. The legality of finding of fact cannot but be termed to be a question of law, we reiterate however, that there must be a definite finding to that effect in the judgement of the High Court so as to make it evident that Section 100 of the Code stands complied with."

(17) In **Leela Soni** *versus* **Rajesh Goyal** (8) the Supreme Court again had the occasion to express its view on the scope of Sections 100, 101 viz-a-viz. Section 103 of the Code. It has been observed that High Court cannot entertain an appeal on question of fact despite the view of the High Court that the findings are erroneous or that different view is possible. However, Section 103 still confer ample power on this Court to determine any issue which is necessary for the disposal of second appeal. The observations of the Supreme Court in this regard read as under :—

"Section 103 CPC authorises the High Court to determine any issue which is ncessary for the disposal of the second appeal provided the evidence on record is sufficient, in any of the following two situations : (1) when that issue has not been determined both by the trial Court as well as the lower appellate court or by the lower appellate Court, or (2) when both the trial Court as well as the appellate Court or the lower appellate Court have wrongly determined any issue on a substantial question of law which can properly be the subject matter of second appeal under Section 100 CPC."

(18) It is also well settled that question of interpretation of document would always raise a substantial question of law as has been laid down by the Supreme Court in the cases of **Kochukakkda Aboobacker** *versus* **Attah Kasim (9)** and **Santa Kumari** *versus* **Lakshmi Amma Janaki Amma (10).**

(8) (2001) 7 S.C.C. 494
(9) (1996) 7 S.C.C. 389
(10) (2000) 7 S.C.C. 60

(19) Having understood the legal position now the judgement and decree dated 20th September, 1984 Exs. P. 8 and P. 9 are required to be read with mutation Ex. PW 9/A dated 2nd December, 1988. A perusal of these documents at page 83 of the record of the trial Court, Ex. PW 9/A indicate that on the basis of the judgement and decreee dated 20th September, 1984 Ex. PW8 and P. 9. mutation has been sanctioned in favour of Deep Chand, defendant respondent No. 1. It further indicates that the mutation has been sanctioned in respect of Rect. No. 116 measuring 0—13 marlas. The relevant entries of Ex. PW 9/A are reproduced hereunder :

| Entry in last Jamabandi | New entry now proposed to substitute | | |
|---|---|---|---|
| Name of owner with description | Name of cultivator with description | No. and name of field area and kind of soil | Nature and date of mutation with price in case of sale & mortgage amt. in case of mortgage |
| 9 | 10 | 11 | 13 |
| Deep Chand son of Likhi Ram, s/o Chhajwa to the extent of 1/2 share others as before to the extent of 1/2 share | As before Share : 1/2 share 0–7 (in red ink) | 116 (min) red ink 0—13 Gair Mumkin | Transfer of ownership as per orders passed by the Court of Shri P.L. Goyal, H.C.S. Senior Sub Judge. |

The mutation regarding transfer of ownership stands sanctioned in its present form Sd/IAC IInd Grade 2-12-1988.

(20) The Courts below have failed to take into consideration the fact that the judgement and decree dated 20th September, 1984 was got mutated by defendant respondent No. 1 from the revenue authorities in respect of Rect. No. 116 (0—13 M). The afore-mantioned factual position deserves to be considered in the light of the statement

made by defendant respondent No. 1 Deep Chand. In his cross-examination he has admitted that he has constructed a room in Rect. No. 116 and the bounderies in the judgement and decreee Exs. P. 8 and P. 9 were mentioned instead of the revenue numbers as at that time he was not aware of the numbers. Obviously on the basis of the afore-mentioned statement mutation has been sanctioned in respect of Rect. No. 116 (0–13 M) as is evident from Ex. PW 9/A. The documents although have been mentioned by the Courts below but no finding has been recorded by reading the mutation Ex. PW 9/A dated 2nd December, 1988. In paras 1, 4(ii) and 5 reference has been made to the judgement and decree dated 20th September, 1984 and the mutation no. 1176 dated 2nd December, 1988. Even an issue has been framed on the basis of the afore-mentioned documents. However, there ia a fundamental error in reading the afore-mentioned document which has resulted in manifest injustice to the plaintiff–appellant because the Courts below have recorded a finding that identity of the land has not been established whereas there is ample evidence in the form of Ex. PW 9/A reflecting the sanctioning of mutation in respect of Rectangle No. 116 (0–13 M) as a Gair Marusi Abadi Land and the same land has been claimed by the plaintiff-appellants. Therefore, the findings of both the Courts below on Issue No. 1 deserves to be set aside.

(21) The argument of the learned counsel for the defendent—respondent No. 1 that Malkhan Singh has admitted the presence of the house on the land would not cut any ice in view of the fact that in the pleadings of the case, plaintiff–appellant in para 1 has averred that the land mentioned in Rect. No. 116 (0–13 M) is Gair Marusi Abadi. Such an entry has to be read as residential area rather than plain plot of land. Therefore, nothing turns on the admission made by Malkhan Singh. plaintiff–appellant when he appeared as PW 9. Even otherwise the documentary evidence in the form of Ex. P 9/A has to be given its due weight in comparison to the oral statement made by any of the witnesses. The afore-mentioned documentary evidence in the form of Ex. P9/A has been supported by defendant respondent No. 1 when he appeared as DW 1. He candidly admitted that the decree Ex. P. 9 dated 20th September, 1984 was in respecrt of Rectangle No. 116 (0–13). I also do not find any force in the submission of the learned counsel for the defendant–respondent that as concurrent findings of facts are not be interfered with. There are exceptions to this Rule and the present case falls under that exception as carved out by the Supreme Court in **Kulwant Kaur's case** *(supra)*.

(22) The other argument that in the application for appointment of the Local Commissioner, the failure of the plaintiff–appellant has been admitted would not require any detailed consideration because in para 5 of the application the only averment made is that the plaintiff–appellant failed to connect the suit property with the property mentioned in the judgment and decree of the trial Court dated 20th September, 1984 despite their due diligence. Therefore it was claimed that appointment of the local Commissioner would be appropriate for deciding the issue raised. The application has been filed through counsel and is duly supported by an affidavit. If the afore-mentioned averment is examined it cannot be considered that there is an admission that the property claimed in the suit is different than the one which was subject matter of the impugned judgement and decree Ex. P. 8 and P. 9 and the mutation Ex. PW 9/A. Under Sections 17, 18, 19, 20 and 21 of the Evidence Act before a statement can be rejected as an admission it has to be clearly established on record that a self harming the statement was made by a person against his own interest being conscious of adverse effect of the statement. Such an averment made in the application cannot be recorded as an admission. The effect of the averment made in the application is only one i.e. to provide justification for seeking appointment of Local Commissioner to demarcate the suit land. In any case such an averment cannot be regarded as admission of the fact that suit land is different than the one mentioned in judgement and decree Ex. P. 8 and P.W. 9 or Ex. PW 9/A. All that was stated was that he failed to connect the suit land with the land which was subject matter of Exs. P. 8. P. 9 and PW 9/A. Therefore, there is no substance in the afore-mentioned submission and I have no hesitation to reject the same.

(22) For the reasons stated above, this appeal succeeds and findings of both the Courts are set aside. The findings of the Courts below are set aside. The judgement and decree dated 20th September, 1984 Exs. P. 8 and P. 9 as well as mutation Ex. PW 9/A are accordingly set aside being null and void. The suit of the plaintiff-appellant is decreed by declaring that the plaintiff–appellant No. 1 is a perpetual lessee and the plaintiff–appellant No. 2 is owner of the suit land. Accordingly a decree be drawn.

***R.N.R.***