



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

SA. No. 4 of 2023

Date of Decision: 17.02.2026

The Shillong Club Ltd.,
A company registered under
the provisions of the Companies
Act, 1956, having its registered
office at Kachari Point,
Shillong – 793001, represented by its
Director.

..... **Appellant**

- Vs-

1. Shri. Nathaniel Thangkhiew,
Joint Rangbah Kur, Thangkhiew Laikpoh,
Nongkseh Rim, Myllem Syiemship,
Upper Shillong – 793005,
Meghalaya.
2. Shri. A. Luckystar Thangkhiew,
Joint Rangbah Kur, Thangkhiew Laikpoh,
Nongkseh Rim, Myllem Syiemship,
Upper Shillong – 793005,
Meghalaya.

..... **Respondents**

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Jindal, Adv.

For the Respondent(s) : Mr. H.L. Shangreiso, Sr. Adv. with



Mr. T. Dkhar, Adv.

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

JUDGMENT AND ORDER

1. The appellant/Shillong Club Ltd. has instituted a suit as plaintiff for Declaration, Permanent Injunction and other consequential relief(s), the dispute being centered around a Lease Deed dated 20.03.1923 which was executed between the said Shillong Club and the Thangkhiew Laikpoh Clan, particularly relating to a letter dated 18.01.2013 issued by the defendant in his capacity as Rangbah Kur of the Thangkhiew Laikpoh Clan, whereby a decision of the Thangkhiew Laikpoh Clan to take back into possession a part of the southern portion of the property said to be unutilized by the plaintiff club was communicated to the said Shillong Club.

2. Citing the said communication dated 18.01.2013 as the cause of action, the appellant as plaintiff has filed the said suit being registered as Title Suit No. 13 (T) of 2013 before the Court of the learned Assistant to the Deputy Commissioner, East Khasi Hills District, Shillong, with a prayer inter-alia, for declaration that the defendant or any of his agent/associates/representatives/servants/successors in interest/assigns, or



any person claiming under or through the defendant has no right to disturb the peaceful possession of the suit property, or any portion thereof, by the plaintiff in any way and by any means whatsoever.

3. The defendant/respondent herein has then filed the written statement refuting the claims of the plaintiff club, upon which after consideration of the pleadings of the parties, the learned trial court had framed 6(six) issues being the following:

1. Whether the parties entered into a registered lease Deed dated 20.03.1923?
2. Whether the said Lease Deed dated 20.03.1923 was to be a lease in perpetuity?
3. Whether the defendant vide Lease Deed dt. 20.10.1914 leased out 16.91 acres of land to the plaintiff's Club and thereafter by the Lease Deed dated 20.03.1923 reduced the area and leased out only 10.91 acres of land to the plaintiff's Club? If so whether the 6 acres of land situated to the South of the Golf Club no longer lease to the plaintiff's club stood reverted back to the defendant and his clan since 1923?
4. Whether the defendant issued letter dated 18.01.2012



expressing an intention to take back into possession the southern portion of the suit property?

5. Whether the plaintiff's Club raised any objection when the defendant leased out portion of the 6 acres of land to the Dorbar Shnong, Golf Link Pynthorumkhrah, to Smti Erbily Hynniewta, Smti Pilantimai Nongbsap, Smti Victoria Sohpha and Smti Margrita Kharumnuid where they have constructed and taken possession of the property?

6. Whether the parties are entitled to any relief/reliefs?

4. The learned trial court had examined 2(two) witnesses in total, i.e. 1(one) witness, Shri Parambir Singh from the side of the plaintiff club, who was examined as PW-1, and who has also exhibited a number of documents and 1(one) witness was also examined on the part of the defendant being Shri. Ashir Shon Thangkhiew. Upon hearing the arguments of the parties, and on consideration of the same including the materials on record, the learned trial court has found it fit to dismiss the case of the plaintiff vide Judgment dated 23.12.2015.

5. Being highly aggrieved and dissatisfied with the said judgment dated 23.12.2015, the appellant herein then preferred an appeal before the



First Appellate Court i.e. the Court of the Deputy Commissioner, Shillong, the same being registered as Title Civil Appeal No. 1 (T) of 2015. The matter being taken up by the learned Additional Deputy Commissioner (J), East Khasi Hills District, Shillong, who upon hearing the parties, has disposed of the appeal vide judgment/order dated 05.10.2023, holding that the judgment dated 23.12.2015 passed by the learned Assistant to Deputy Commissioner is valid.

6. Being aggrieved by the said judgment/order dated 05.10.2023, the appellant has preferred this second appeal, assailing the said judgment on various grounds numbering about 13(thirteen) of them. The appellant has also suggested a number of substantial questions of law, about 4(four) of them with a prayer for this Court to formulate such substantial question of law required for proper adjudication of this second appeal.

7. On being so suggested, this Court has framed two substantial questions of law being:

1. Whether a First Appellate Court can grant relief to the respondent in the appeal in the absence of the counter claim/cross-appeal? and;
2. Whether the provision of the Transfer of Property Act 1882 have no application over the tribal areas of the State



of Meghalaya in view of the operation of the Assam Frontier Tracts Regulation Acts 1880?

8. Accordingly, this Court has heard the argument of the learned counsels for the respective parties. Mr. S. Jindal, learned counsel for the appellant club, at the outset, has led this Court to the facts and circumstances leading to the filing of this second appeal.

9. The learned counsel has however stress on the fact that the Lease Deed dated 20.03.1923 executed by the representative of the appellant club and the representative of the defendant clan involves land measuring about 10.19 acres which was meant for the objective of establishing a golf course, the appellant club being given the status of lessee over the said land. Furthermore, the said lease is a perpetual lease, and therefore, was to operate in-perpetuity, the only clause for termination of the said lease is dependent on the lessee's decision to relinquish the said lease at any time upon service of notice upon the lessor, the service period being 1(one) year.

10. It is also the submission of the learned counsel that the appellant club has been regularly paying the annual rent as stipulated under the relevant terms and conditions of the said lease of 1923. Surprisingly, the appellant club was shocked and surprised to receive the letter dated 18.01.2013 issued by the respondent/defendant wherein, it was alleged that since the southern portion



of the property is unutilized by the appellant club, therefore, the respondent clan has decided to take back into possession such portion of the land. In fact, the respondent clan had already floated advertisement in a local newspaper (Shillong Times dated 13.04.2013) offering for sale of 5000 square feet of the land @ of 2500 per square feet, such land being comprised within the suit property, or rather within the land of the appellant club. This is not the only instance where a portion of the suit land was offered for sale, but there are also other plots of land within the suit property which was offered for sale by the respondent clan to willing buyers.

11. Under such circumstances the appellant club had instituted a suit being Title Suit No. 13 (T) of 2013 before the Court of the learned Assistant to Deputy Commissioner, Shillong.

12. Again, the learned counsel has submitted that the respondent has filed the written statement before the trial court, but has not made any counter claim, however, one of the stands taken in the written statement was that the parties herein had entered into a Lease Deed dated 20.10.1914 for an area of 16.91 acres said to have been leased out to the appellant club and that 6 acres of the said leased land situated on the southern portion was returned to the respondent in the year 1923, following which a fresh lease for the remaining 10.19 acres of land was entered into by the parties on 20.03.1923 (supra).



13. Coming to the judgment passed by the learned Assistant to the Deputy Commissioner dated 23.12.2015, the learned counsel has contended that though, the learned trial court had come to a finding that the said Lease Deed dated 20.10.1914 involves a different entity and not the present appellant club, therefore “...*there is no question of the 6 acres of land situated at the south of the golf club being reverted back to the defendant since 1923...*”. In spite of this finding, the learned trial court went on to reject the suit of the appellant club following which an appeal was preferred by the appellant club before the First Appellate Court being Title Civil Appeal No. 1 of 2015.

14. It is the submission of the learned counsel that the said appeal was dismissed by the First Appellate Court vide the impugned judgment dated 05.10.2023, which judgment is not sustainable in law and facts, inasmuch as, the same was passed in a mechanical manner totally ignoring the fact that the suit land has been in the possession of the appellant club for about a hundred years or so.

15. It is also the contention of the learned counsel that the learned First Appellate Court without framing ‘points of determination’ and without any discussion on the issues framed by the learned trial court has passed the impugned judgment.



16. In this context the learned counsel has referred to the case of **K. Karuppuraj v. M. Ganesan, (2021) 10 SCC 777**, wherein at para 7, 8, 9 and 11, the Hon'ble Supreme Court has observed as follows:

"7. ... Having gone through the impugned judgment and order passed by the High Court, it can be seen that there is a total non-compliance of Order 41 Rule 31 CPC. While disposing of the appeal, the High Court has not raised the points for determination as required under Order 41 Rule 31 CPC. It also appears that the High Court being the first appellate court has not discussed the entire matter and the issues in detail and as such it does not reveal that the High Court has re-appreciated the evidence while disposing of the first appeal. It also appears that the High Court has disposed of the appeal preferred under Order 41 CPC read with Section 96 in a most casual and perfunctory manner. Apart from the fact that the High Court has not framed the points for determination as required under Order 41 Rule 31 CPC, it appears that even the High Court has not exercised the powers vested in it as a first appellate court. As observed above, the High Court has neither re-appreciated the entire evidence on record nor has given any specific findings on the issues which were even raised before the learned trial court.

8. In **B.V. Nagesh, B. V. Nagesh v. H.V. Sreenivasa Murthy, (2010) 13 SCC 530**, this Court has observed and held that without framing points for determination and considering both facts and law; without proper discussion and assigning the reasons, the first appellate court cannot dispose of the first appeal under Section 96 CPC and that too without raising the points for determination as provided under Order 41 Rule 31 CPC. In paras 3 and 4, it is observed and held as under: (SCC pp. 530-31)

"3. How the regular first appeal is to be disposed of by the appellate court/High Court has been considered by this Court in various decisions. Order 41 CPC deals with appeals from original decrees. Among the various rules, Rule 31 mandates that the judgment of the appellate court shall state:

- (a) the points for determination;
- (b) the decision thereon;



- (c) the reasons for the decision; and
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

4. The appellate court has jurisdiction to reverse or affirm the findings of the trial court. The 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. Sitting as a court of first appeal, it was the duty of the High Court, *H.V. Sreenivasa Murthy v. B.V. Nagesha*, 2008 SCC OnLine Kar 837, to deal with all the issues and the evidence led by the parties before recording its findings. The first appeal is a valuable right and the parties have a right to be heard both on questions of law and on facts and the judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support of the findings. (*Vide Santosh Hazari v. Purushottam Tiwari*, (2001) 3 SCC 179, SCC p. 188, para 15 and *Madhukar v. Sangram*, (2001) 4 SCC 756, SCC p. 758, para 5.)"

9. In *Emmsons International Ltd., SBI v. Emmsons International Ltd.*, (2011) 12 SCC 174 while considering the scope and ambit of exercise of powers under Section 96 CPC by the appellate court and after considering the decisions of this Court in *Madhukar v. Sangram*, (2001) 4 SCC 756, *H.K.N. Swami v. Irshad Basith*, (2005) 10 SCC 243 and *Jagannath v. Arulappa*, (2005) 12 SCC 303, it is held that sitting as a court of first appeal, it is the duty of the appellate court to deal with all the issues and the evidence led by the parties before recording its findings."

11. Applying the law laid down by this Court in the aforesaid decisions, if the impugned judgment and order passed by the High Court is considered, in that case, there is a total non-



compliance of the provisions of Order 41 Rule 31 CPC. The High Court has failed to exercise the jurisdiction vested in it as a first appellate court; the High Court has not at all re-appreciated the entire evidence on record; and not even considered the reasoning given by the learned trial court, in particular, on findings recorded by the learned trial court on the issue of willingness. Therefore, as such, the impugned judgment and order passed by the High Court is unsustainable and in normal circumstances we would have accepted the request of the learned Senior Counsel appearing on behalf of the respondent to remand the matter to the High Court for fresh consideration of appeal. However, even on other points also, the impugned judgment and order passed by the High Court is not sustainable. We refrain from remanding the matter to the High Court and we decide the appeal on merits".

17. The learned counsel has also submitted that in reiteration of a fact, the learned First Appellate Court at para 85 of the impugned judgment, had observed that the Lease Deed dated 20.03.1923 was executed between the parties herein, and such deed was a perpetual lease which was granted by the respondent to the appellant club over an area of 10.19 acres. However, such assertion was contradicted by another observation that because the original Lease Deed dated 20.03.1923 has not been produced by the appellant club, in this regard, an adverse inference has to be drawn against the appellant, such observation being unwarranted since the said Lease Deed was not in dispute between the parties, submits the learned counsel.

18. The next objection raised by the learned counsel is to an apparent erroneous finding of the learned First Appellate Court as regard the applicability of the "Assam Frontier Tracts Regulation, 1880" to the case of



the parties, wherein at para 88 and 89 of the impugned judgment, the court has held that the suit land being situated outside the normal area of Shillong, it therefore falls under the provisions of the “Assam Frontier Tracts Regulation, 1880” at the time when the said Lease Deed dated 20.03.1923 was executed. The said land also being declared as a backward track by notification published in 1929 under the Government of India Act, 1915-19, the provision of the Transfer of Property Act, 1882 does not apply to the land situated outside the normal areas of Shillong at the relevant period when the said Lease Deed dated 20.03.1923 was executed. The court has then held that the said Lease Deed is not a valid Lease Deed.

19. As to the applicability or non-applicability of the said Regulation of 1880, the learned counsel has submitted that this was never an issue before the trial court nor was the same argued by the parties before the First Appellate Court, therefore, by such findings, the learned First Appellate Court has granted relief outside of the pleadings which cannot be sustained in law. In this regard, the case of **Akella Lalitha v. Konda Hanumanthapa, 2022 SCC OnLine SC 928**, para 17 was referred to by the learned counsel, where it was held that:

"17. ...It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the Court was not entitled to grant the relief not asked for and no



prayer was ever made to amend the plaint so as to incorporate in it an alternative case."

20. Because of the flawed reasoning adopted by the learned First Appellate Court, when on one hand at para 85 of the impugned judgment, it was held that the said Lease Deed of 1923 has been validly executed between the parties, the conclusion of the judgment at para 93 has reflected the decision of the said court wherein, it was held that "*... appellant/plaintiff has failed to establish their case that they are the lawful lessee in respect of the suit property and holds the suit property under the valid perpetual lease deed...*" therefore, with such contradictions, the impugned judgment cannot be sustained, submits the learned counsel.

21. Under such circumstances, the learned counsel has submitted that, since it is settled that an appeal is a continuation of the original proceedings and the entire issue is to be considered and discussed, there has been no counter claim/counter suit filed by the respondent clan seeking any relief whatsoever either in terms of possession of the 6 acres alleged to have been returned to the respondents in 1923 or in respect of the Lease Deed dated 20.03.1923, in the impugned judgment relief having been granted beyond the pleadings of the parties, therefore, the first question of law formulated by this Court may be decided accordingly and in favour of the appellant herein.

22. On the second question of law, the learned counsel has submitted



that the said Assam Frontier Tracts Regulation, 1880 has absolutely no application in the case of the parties herein, and even, if assuming, but not conceding that the same is applicable herein, even then the principle of law known as the “...*Doctrine of Desuetude*...” would be applicable in this case. Such doctrine has been explained by the Supreme Court in the case of **Monnet Ispat and Energy Limited v. Union of India and Ors, (2012) 11 SCC 1**, wherein at para 201, it was held as follows:

"201. From the above, the essentials of the doctrine of desuetude may be summarised as follows:

- (i) The doctrine of desuetude denotes a principle of quasi-repeal but this doctrine is ordinarily seen with disfavour.
- (ii) Although the doctrine of desuetude has been made applicable in India on few occasions but for its applicability, two factors, namely, (i) that the statute or legislation has not been in operation for a very considerable period, and (ii) the contrary practice has been followed over a period of time must be clearly satisfied. Both ingredients are essential and want of any one of them would not attract the doctrine of desuetude. In other words, a mere neglect of a statute or legislation over a period of time is not sufficient but it must be firmly established that not only the statute or legislation was completely neglected but also the practice contrary to such statute or legislation has been followed for a considerably long period."

23. Apparently, the said regulation of 1880 has not been in operation for a considerable period, at least ever since the creation of the State of Meghalaya in 1972, and since such regulation have not been adopted by the State, on the contrary, the provisions of the Transfer of Property Act being



followed consistently, therefore, the said regulation of 1880 have now been impliedly repealed on account of the Doctrine of Desuetude. As such, the substantial question of law to be decided in this regard must be in the negative, submits the learned counsel.

24. In reply, Mr. H.L. Shangreiso, learned Sr. counsel assisted by Mr. T. Dkhar, learned counsel appearing for the respondents, before adverting to the question of law formulated herein, has also led this Court to the facts of the case from the prospective of the respondent, and has submitted that the main prayer of the appellant/plaintiff/Shillong Club Ltd. is for declaration that it is a lawful lessee of the suit property, and secondly, that the respondent/defendant herein have no right to disturb the peaceful possession of the suit property or any portion thereof.

25. Further, the submission of the learned Sr. counsel is that the suit property as described in the Schedule to the plaint was contained in a Lease Deed dated 20.03.1923, by which Lease Deed, the respondent Thangkhiew Laikpoh Clan has leased out the property measuring more or less 10.19 acres to the appellant Shillong Club Ltd.

26. The learned Sr. counsel went on to submit that there was an earlier Lease Deed executed between the parties herein pertaining to a land measuring about 16.91 acres which included the land described in the



schedule to the plaint, that is, 10.19 acres which Lease Deed was dated 01.04.1914, the same was for a term of 10(ten) years. However, the respondent clan realizing the need for some land, has decided to take back a portion of the land contained in the 16.91 acres portion, and accordingly, a new Lease Deed was executed on 20.03.1923, the total area of the land being reduced to 10.19 acres.

27. As regard the 6 acres or so of the land which was reverted to the respondent clan, on noticing that there are some encroachments thereon, therefore, the respondent has intimated this fact to the appellant club by way of the letter dated 18.01.2013. This was not necessary since that portion of land is already in the possession of the respondent clan. However, taking advantage of such letter, the appellant club has construed the action of the respondent clan as an act of claiming the southern portion of the suit land and has accordingly filed the said title suit with the prayer as aforesaid.

28. The learned Sr. counsel has reiterated that the respondent clan has no quarrel with the citations in the said Lease Deed dated 20.03.1923 and has acknowledged that the appellant club has executed the said Lease Deed in-perpetuity with regard to an area of land measuring 10.19 acres.

29. The fact of the matter is that within the said 6 acres of land, the respondent clan had settled some portions of the same to a number of persons



upon which they have also constructed their respective houses, and such construction being adjacent to the suit land, no objection whatsoever was raised by the appellant/plaintiff club at the relevant point of time, submits the learned Sr. counsel.

30. On the basis of the pleadings and the materials on records as well as the evidence of the plaintiff and defendant being taken into account, the learned trial court, upon hearing the parties, have dismissed the suit. However, no relief was ever granted to the respondent clan. Therefore, the contention of the appellant club that relief was granted to the respondent clan without there being any counter claim, has no basis at all, submits the learned Sr. counsel.

31. The learned Sr. counsel, while referring to the judgment of the First Appellate Court, has submitted that the court while appreciating the evidence of the parties, has also noticed that the sole witness of the appellant, represented by the plaintiff, has failed to indicate the location of the suit land, and has also not been able to produce the original lease deed, and on this and other grounds, had dismissed the appeal. However, here too, no relief was ever granted to the respondent clan.

32. In this backdrop, the learned Sr. counsel has submitted that the contention of the appellant in this second appeal that the effect of the impugned judgment by the court below amounts to granting relief to the



respondent without counter claim/cross appeal is incorrect, as such, the first substantial question of law as framed by this Court has to be answered in the negative.

33. On the second issue of law framed by this Court, the same was based on the findings arrived at by the learned First Appellate Court at para 88, 89 and 90 of the impugned judgment and was raised by the appellant herein in this appeal at ground No. VIII, the learned Sr. counsel has submitted that the question of application of the Assam Frontier Tracts Regulation, 1880 in tribals areas and non-application of the Transfer of Property Act, 1882 as regard the suit land was never an issue between the parties and the same can be termed as an erroneous finding on a non-issue, at best, such finding can be considered as incidental or collateral in nature having no bearing on the final outcome of the case between the parties.

34. The substantial question of law framed in this regard cannot be considered substantial question of law since this Court sitting as the second appellate court cannot re-appreciate evidence and interfere with findings of facts. The case of **State Bank of India and Ors v. S.N. Goyal, (2008) 8 SCC 92** para 3, 14 and 15 have been referred to in this regard, wherein at para 14 and 15 of the same, the Apex Court has reiterated the procedure relating to second appeals, which paragraphs are hereby reproduced as:



“14. We may next refer to the procedure relating to second appeals as evident from Section 100 read with Order 42 Rules 1 and 2 of the Code of Civil Procedure:

(a) The appellant should set out in the memorandum of appeal the substantial questions of law involved in the appeal.

(b) The High Court should entertain the second appeal only if it is satisfied that the case involves a substantial question of law.

(c) While admitting or entertaining the second appeal, the High Court should formulate the substantial questions of law involved in the case.

(d) The second appeal shall be heard on the question(s) of law so formulated and the respondent can submit at the hearing that the second appeal does not in fact involve any such question of law. The appellant cannot urge any other ground other than the substantial question of law without the leave of the Court.

(e) The High Court is at liberty to reformulate the substantial questions of law or frame other substantial question of law, for reasons to be recorded and hear the parties on such reformulated or additional substantial questions of law.

15. It is a matter of concern that the scope of second appeals and as also the procedural aspects of second appeals are often ignored by the High Courts. Some of the oft-repeated errors are:

(a) Admitting a second appeal when it does not give rise to a substantial question of law.

(b) Admitting second appeals without formulating substantial question of law.

(c) Admitting second appeals by formulating a standard or mechanical question such as "whether on the facts and circumstances the judgment of the first appellate court calls for interference" as the substantial question of law.

(d) Failing to consider and formulate relevant and



appropriate substantial question(s) of law involved in the second appeal.

(e) Rejecting second appeals on the ground that the case does not involve any substantial question of law, when the case in fact involves substantial questions of law.

(f) Reformulating the substantial question of law after the conclusion of the hearing, while preparing the judgment, thereby denying an opportunity to the parties to make submissions on the reformulated substantial question of law.

(g) Deciding second appeals by reappreciating evidence and interfering with findings of fact, ignoring the questions of law.

These lapses or technical errors lead to injustice and also give rise to avoidable further appeals to this Court and remands by this Court, thereby prolonging the period of litigation. Care should be taken to ensure that the cases not involving substantial questions of law are not entertained, and at the same time ensure that cases involving substantial questions of law are not rejected as not involving substantial questions of law.”

35. This Court, on an understanding of the case of the parties herein, is made aware that the dispute revolves only around a demarcation of the boundaries of the land of the appellant/club said to have been leased out to them and confirmed by the existence of the said Lease Deed of 20.03.1923, the area of which measures about 10.19 acres.

36. There is no dispute between the parties as regard the said Lease Deed and the nature thereof, that is, that it is a lease for perpetuity. In course of proceedings before the trial court, the fact that there was an earlier lease deed executed between the parties dated 01.04.1914 for a period of 10(ten)



years covering an area of 16.91 acres, has also been pointed out by the respondent/defendant. However, it was further revealed that on an understanding between the parties, in the year 1923, a portion of the said land of 16.91 acres, measuring about 6.72 acres has been resumed by the respondent clan, and hence, a fresh lease deed of 1923(supra) was drawn out. It is this portion of the land that is apparently in dispute, but not expressly or clearly made out in the pleadings of the parties.

37. The claim of the appellant club before the trial court is only that the boundaries contained in the 1923 lease deed be kept intact, though an oblique reference was made that there is no claim whatsoever as far the said 6.72 acres of land is concerned. Similarly, the respondent clan has also indicated that there is no attempt to claim the portion or part of the portion of land measuring about 10.19 acres described in the 1923 lease deed.

38. It is also noticed that in the plaint of the appellant club, the main prayer of the plaintiff/appellant club is for declaration that it is the lawful lessee for the said suit property holding under a valid perpetual lease deed and another prayer to the effect that the defendant/respondent clan has no right to disturb the peaceful possession of the suit land.

39. On this score, the learned Trial Judge, on relevant issues framed in this regard, has come to a finding that both the parties have admitted to the



fact that there was a Lease Deed dated 23.03.1923 between the parties herein. Therefore, the contents and nature of the said lease deed of 1923 have not been disturbed in any way by the defendant/respondent clan. In this manner, it can be deduced that the said area of 10.19 acres remained in the possession of the plaintiff/appellant club. On appeal, though the First Appellate Court, on appreciation of the evidence tendered before the trial court, has come to a totally different finding as regard the said lease deed of 1923, and has held that the same is not a valid document, since the original deed was not presented in Court by the appellant plaintiff.

40. The second ground upon which the First Appellate Court has relied upon to practically invalidate the said lease deed of 1923, is the finding reached by purportedly applying the provisions of the Assam Frontier Tracts Regulation, 1880, holding that by a relevant notification published in 1929, the land covered by the said lease deed is said to fall outside the normal area of Shillong, and consequently, the Transfer of Property Act, 1882, would also not be in force in the territorial jurisdiction where the said property/land covered by the said lease is situated. On this ground, the said lease deed (supra) has been declared to be invalid.

41. Before deciding on the substantial question of law formulated by this Court, it may not be out of place to refer to the evidence on record,



particularly to the fact that the appellant club/plaintiff has asserted that the suit land comprises of an area of 10.19 acres covered by the said lease deed of 1923. It is also in the evidence of the plaintiff as PW-1 that he has deposed that *“in other words, no claim has been raised by the club in respect of the 6.72 acres which apparently relinquished in 1923.”* The respondent defendant clan has also affirmed that the said lease deed of 1923 is a valid deed, and therefore, no claim has been made by the clan as regard the 10.19 acres or even a portion of such land. Evidence also revealed that the PW-1 was aware that a local inspection on the suit property was directed and conducted on the order of the court, but the plaintiff club has objected to the said inspection. This, to the mind of this Court has cast a doubt as to the veracity of the claim of the plaintiff in the suit, vis-a vis the boundaries of the suitland.

42. The Court at the first instance, taking note of the fact that the validity and contents of the said lease deed of 1923, is not in dispute between the parties, has come to a finding that the plaintiff is not entitled to any relief.

43. Another aspect of the matter, is the fact brought out in evidence that the respondent clan/defendant had leased out an area of 18,000 square feet for the construction of a Community Hall of the Dorbar Shnong of Golflink, Pynthorumkhrah on 09.04.1991, and subsequently, on 30.07.1996, an area of about 2622 square feet were sold to one Smti. Erbily Hynniewta,



and another portion measuring about 9690 square feet was also sold to one Smti. Pliantimai Nongbsap on 18.06.2010, and also some other plots were sold to different persons, the claim of the DW-1 in his evidence on behalf of the defendant/respondent clan being that such land leased and sold to different parties were contained within the 6.72 acres of land, and as such, has no connection with the suit land. This piece of evidence when confronted by the PW-1 in his cross examination, he has stated that he is not aware as to whether the plaintiff club has raised any objection when such portion of land situated to the south of the club's house was allotted to the said entity and individuals. On this issue, the trial court has come to a finding that the plaintiff failing to raise any objection at the relevant point of time, the objection raised subsequently is barred by estoppel. This will have a bearing as far as the portion of 6.72 acres is concerned.

44. Under such circumstances, this Court finds no reason to disturb the findings of the learned trial court.

45. The appellant club being aggrieved and dissatisfied with the said judgment of the trial court (Assistant to Deputy Commissioner, East Khasi Hills District) dated 23.12.2015, has preferred an appeal before the Court of the Additional Deputy Commissioner (J), East Khasi Hills District, Shillong (First Appellate Court) and the said First Appellate Court, vide judgment



dated 05.10.2023, has dismissed the appeal. Hence, this second appeal.

46. On perusal of the impugned appeal passed by the First Appellate Court, as has been pointed out at para 85 of the same, the learned Additional Deputy Commissioner (J), has observed that both the parties have admitted that there is a lease deed dated 20.03.1923 executed between the parties for an area of 10.19 acres, the said lease deed being perpetual in nature.

47. However, in the preceding paragraphs of the impugned judgment, the learned First Appellate Court has discussed the manner in which the said lease deed was introduced in evidence by the plaintiff and has held that the same not being an original deed, therefore, it was held that the appellant club/plaintiff has failed to establish their case that they are the lawful lessee in respect of the suit property, and accordingly, the appeal was dismissed.

48. In this respect, this Court would agree with the contention of the learned counsel for the appellant herein that in view of the admission of the parties as to the existence or authenticity of the said lease deed 20.03.1923, the learned First Appellate Court could not have come to a finding that the said lease deed is not a valid deed. Such finding can be termed as a perverse finding not based on evidence, and this by itself, can constitute a question of law to be decided by this Court. The case of **Gurgachan Kaur v. Salikram**,



(2010) 15 SCC 530, at para 10 would be relevant to this point, wherein it was held that “*it is settle law that in exercise of power under section 100 of the Code of Civil Procedure, the High Court cannot interfere with the finding of fact recorded by the first appellate court which is the final court of fact, unless the same is found to be perverse...*”. Similarly, in the case of **Dale & Carrington Invt. (P) Ltd. and Anr v. P.K. Prathapan and Ors, 2004 SCC OnLine SC 1067**, at para 36 the Supreme Court has held as follows:

“36. Section 10-F refers to an appeal being filed on a question of law. The learned counsel for the appellant argued that the High Court could not disturb the findings of fact arrived at by the Company Law Board. It was further argued that the High Court has recorded its own finding on certain issues which the High Court could not go into and, therefore, the judgment of the High Court is liable to be set aside. We do not agree with the submission made by the learned counsel for the appellants. **It is settled law that if a finding of fact is perverse and is based on no evidence, it can be set aside in appeal even though the appeal is permissible only on the question of law. The perversity of the finding itself becomes a question of law.** In the present case we have demonstrated that the judgment of the Company Law Board was given in a very cursory and cavalier manner. The Board has not gone into real issues which were germane for the decision of the controversy involved in the case. The High Court has rightly gone into the depth of the matter. As already stated, the controversy in the case revolved around alleged allotment of additional shares in favour of Ramanujam and whether the allotment of additional shares was an act of oppression on his part. On the issue of oppression the finding of the Company Law Board was in favour of Prathapan i.e. his impugned act was held to be an act of oppression. The said finding has been maintained by the High Court although it has given stronger reasons for the same.”

49. Even otherwise, on an overall analysis of the facts and



circumstances of the case of the parties, including the evidence and the impugned judgments of the First Appellate Court, there is no finding or direction which has specifically bestowed the respondent clan with any relief, for example, that the respondent is allowed to take possession of the suit land. The suit land would remain intact as the possession of the appellant club over such land has not been disturbed. This being the case, the first question of law formulated has to be answered in the negative.

50. Coming to the second question of law, the respective parties herein are in unison that nothing in the plaint or the written statement or even in the evidence was the issue of the application of the Assam Frontier Tracts Regulation, 1880, as well as the Transfer of Property Act, 1882, being applicable to the case of the parties, have been raised by either of the parties. As such, no relief could have been granted as was done so outside the pleadings of the parties. The case of *Akella Lalitha v. Konda Hanumanthapa* (supra) at para 17 referred in this regard is found relevant.

51. The finding of the learned First Appellate Court on this count as contended by the parties and also favored by this Court is indeed an erroneous finding, and has no connection to the pleadings or evidence on record. Accordingly, this Court finds that such findings cannot be the basis of any substantial question of law, no decision in this regard is required. However,



since by reason of such finding, the right of the appellant club over the land covered by the said lease deed of 1923 has been affected, in this respect, this Court hereby hold that the findings of learned First Appellate Court cannot be sustained.

52. In view of this fact, this Court finds that the judgment of the learned First Appellate Court to the extent indicated above, is factually and legally flawed, and accordingly, the same is hereby set aside and quashed. However, it cannot be said that the First Appellate Court has not raised points for determination of the appeal, even, if such determination is not issue based.

53. The findings at para 85 of the impugned judgment of the learned First Appellate Court, would however be maintained.

54. On the basis of the observations and findings as narrated hereinabove, this Court hereby conclude that in any view of the matter, the right of the appellant club over the said land covered by the said lease deed of 1923 has not been disturbed. In this regard the concurrent findings on facts by the trial court as well as by the First Appellate Court, cannot be upturned by this Court. In the case of **Navaneethammal v. Arjuna Chetty, (1996) 6 SCC 116**, the Apex Court at para 11 has held as follows:

“11. This Court, time without number, pointed out that interference with the concurrent findings of the courts below by the High Court under Section 100 CPC must be avoided unless warranted by compelling reasons. In any case, the High Court is



not expected to reappreciate the evidence just to replace the findings of the lower courts.”

55. Again, under the facts and circumstances of the case, as has been observed by this Court on the point of perverse findings and concurrent findings, apart from the authorities cited by the learned counsel for the appellant, the observation of the Hon’ble Supreme Court at para 27, 28 and 30 in the case of **Municipal Committee, Hoshiarpur v. Punjab State Electricity Board and Ors, (2010) 13 SCC 216**, is found relevant which are also reproduced herein below:

“27. There is no prohibition on entertaining a second appeal even on a question of fact provided the court is satisfied that the findings of fact recorded by the courts below stood vitiated by non-consideration of relevant evidence or by showing an erroneous approach to the matter i.e. that the findings of fact are found to be perverse. But the High Court cannot interfere with the concurrent findings of fact in a routine and casual manner by substituting its subjective satisfaction in place of that of the lower courts. (Vide *Jagdish Singh v. Natthu Singh*, (1992) 1 SCC 647, *Karnataka Board of Wakf v. Anjuman-E-Ismail Madris-Un-Niswan*, (1999) 6 SCC 343 and *Dinesh Kumar v. Yusuf Ali*, (2010) 12 SCC 740).

28. If a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then the finding is rendered infirm in the eye of the law. If the findings of the Court are based on no evidence or evidence which is thoroughly unreliable or evidence that suffers from the vice of procedural irregularity or the findings are such that no reasonable person would have arrived at those findings, then the findings may be said to be perverse. Further if the findings are either ipse dixit of the Court or based on conjecture and surmises,



the judgment suffers from the additional infirmity of non-application of mind and thus, stands vitiated. (Vide Bharatha Matha v. R. Vijaya Renganathan, (2010) 11 SCC 483).

30. The issue of perversity itself is a substantial question of law and, therefore, Section 103 CPC can be held to be supplementary to Section 100 CPC, and does not supplant it altogether. Reading it otherwise, would render the provisions of Section 100 CPC redundant. It is only an issue that involves a substantial question of law that can be adjudicated upon by the High Court itself instead of remanding the case to the court below, provided there is sufficient evidence on record to adjudicate upon the said issue and other conditions mentioned therein stand fulfilled. Thus, the object of the section is to avoid remand and adjudicate the issue if the finding(s) of fact recorded by the court(s) below are found to be perverse. The court is under an obligation to give notice to all the parties concerned for adjudication of the said issue and decide the same after giving them full opportunity of hearing.”

56. In conclusion, this Court, except to the extent indicated hereinabove, finds no merits in this Second Appeal. The same is hereby dismissed.

57. The relevant records called for from the trial court as well as from the First Appellate Court are to be sent back.

58. Appeal disposed of. No costs.

Judge