



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1. RSA-2256-1995 (O&M)
Reserved on: 16.05.2025
Date of decision: 27.05.2025

NARPINDER SINGH (DECEASED) THROUGH LRS. & ORS.

..Appellants

Versus

RAM SARUP (DECEASED) THROUGH LRS. & ORS.

..Respondents

2. RSA-2257-1995 (O&M)

NARPINDER SINGH (DECEASED) THROUGH LRS. & ORS.

..Appellants

Versus

RAM SARUP (DECEASED) THROUGH LRS. & ORS.

..Respondents

3. RSA-2258-1995 (O&M)

NARPINDER SINGH (DECEASED) THROUGH LRS. & ORS.

..Appellants

Versus

VISHWA MITRA (DECEASED) THROUGH LRS. & ORS.

..Respondents

4. RSA-2259-1995 (O&M)

NARPINDER SINGH (DECEASED) THROUGH LRS. & ORS.

..Appellants

Versus

VISHWA MITRA (DECEASED) THROUGH LRS. & ORS.

..Respondents



5. RSA-2260-1995 (O&M)

NARPINDER SINGH (DECEASED) THROUGH LRS. & ORS.

..Appellants

Versus

VISHWA MITRA (DECEASED) THROUGH LRS. & ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Navjot Kaur, Advocate
for Mr. B.S. Bhalla, Advocate
for the appellants.

None for respondents.

ANIL KSHETARPAL, J.

I. Brief facts of the case:-

1. With the consent of learned counsel for the appellants as many as five connected regular second appeals shall stand disposed of by this common order.

2. These five appeals have been filed by the defendants to challenge the correctness of concurrent findings of fact arrived at by the Courts below while decreeing two separate suits filed by the plaintiffs, which were consolidated and disposed of by a common judgment by the trial Court as well as by the First Appellate Court.

3. Civil Suit No.5641 of 03.03.1981 (hereinafter referred to as 'Ist suit') was filed by Sh. Vishwa Mitra with a prayer to pass decree for possession by way of removal of the wall erected by defendant No.1 to 3 and removal of hand pump in the plot measuring 5 marlas. Defendant No.6 to 9 in the first suit also filed a separate suit (hereinafter referred to as '2nd suit') for possession by removal of walls and 'malba' of plot. It has come on record that predecessor of Sh. Vishwa Mitra purchased the property from Sh. Jagat Ram, who in turn purchased the property from Sh. Ram Nath, who in



turn purchased the property from Sh. Chirag Shah. Similarly, in the second suit, it has come on record that the predecessor in interest of Sh. Sadhu Ram purchased the property from Sh. Nikke Shah and Sh. Fajje Shah. Defendants (appellants) claim that they have become owners by way of adverse possession as their possession is continuous, hostile and open. Upon appreciation of evidence, trial Court decreed both the suits, which in five appeals filed by the defendants as well as plaintiffs was modified by the First Appellate Court in the following manner:-

“For the reasons recorded above, there is warrant to conclude that defendants No.1 to 5 warrant never remained in possession of the plot in dispute prior to the filing of the suit by Shri Vishwa Mittar and that they forcibly came into possession of the same on or about 21.11.1991 by raising boundary wall around it. At any rate, the defendants No.1 to 5 have miserably failed to prove their adverse possession on the plot in dispute so as to entitle them to competently claim ownership thereof by way of adverse possession. The learned trial court has thus correctly recorded the finding on this aspect of the case. The defendants No.1 to 5 are consequently, held in possession of the plot in dispute as tres-passers and not as owners. That being so, they have no locus standi to resist the recovery of possession of the plot in dispute by co-owners or even by some of them. It is well settled law that possession of a vacant site follows title. From the evidence discussed above it is amply proved that Shri Vishwa Mittar was allotted the plot in dispute, as fully described in the head note of the plaint filed by him in his Suit No.546-1 of 1981 and his claim on this aspect was also admitted by the Assistant Custodian, Punjab, Jalandhar vide his order dated 8.12.1966. As regards the claim of defendants No.6 to 9, they were allotted plot mark 'A' in the site plan Ex.D.10 which also includes the plot of Vishwa Mittar, the title of the plaintiff and his predecessors-in-interest being earlier to that of defendants No.6 to 9 and their predecessor-in-interest shall prevail with the consequence that Shri Vishwa Mittar, plaintiff in Suit No.546-1 of 1981 is held entitled to recover possession of the plot in dispute as detailed in the head note of the plaint filed by him in his suit, whereas defendants No.6 to 9 are held entitled to the recovery of possession of the plot in dispute as detailed in the head note of the plaint filed by them in their suit, excluding the plot of Shri Vishwa Mittar and this



arrangement would be subject to adjustment amongst all the co-owners at the time of final partition of the entire joint property. As regards the claim of Shanti Parshad and Tara Chand defendant No.10 and 11 in the suit filed by Shri Vishwa Mittar, they are in settled possession of specific portion situated on the south-east corner of the entire plot and none of the parties has disputed their claim to the said specific portion of the plot and, rather, they were impleaded as proforma defendants and no claim was claimed against them with the consequence that these defendants shall remain in possession of their respective portions of the plot and their possession cannot be disturbed till final partition is effected of the entire joint plot and rights of the co-owners are determined therein. The net result being be that appeal No.12 of 1990 (Nirpinder Singh etc. Vs. Ram Sarup etc.) and appeal No.24 of 1990-93 (Nirpinder Singh etc. Vs. Shri Vishwa Mittar etc.) are dismissed being without any merits; whereas appeal No.25 of 1990-93 (Vishwa Mittar Vs. Nirpinder Singh etc.) and appeal No.26 of 1990-93 (Vishwa Mittar son of Tara Chand etc. Vs. Vishwa Mittar etc.) are accepted as also cross objections filed by Leela Wati etc., objectors in appeal No.27 of 1990-93 are allowed. Vishwa Mittar, plaintiff and defendants No.6 to 9 or their L.Rs (Objectors in the cross objections petition) are held entitled to recover possession of the suit property to the extent as indicated above. That apart, defendants No.10 and 11 in Suit No.546-1 of 1981 are held entitled to remain in possession of the specific portion of the plot situated on the southern-eastern corner thereof till final partition is effected amongst co-owners and right of all the co-owners inter se are determined therein. No order as to costs in the circumstances of the case. Lower court record be returned and the appeal file and that of cross-objections be consigned to the record room.”

II. Arguments addressed:-

4. Learned counsel for the appellants has made the following three submissions:-

- i. Under the garb of additional evidence, the Court has permitted the plaintiffs to lead secondary evidence, which is not permissible.
- ii. Both the suits filed by the separate set of plaintiffs are liable to be dismissed on non-joinder of necessary parties



as Punjab Wakf Board, which owns 14 marlas land has not been impleaded.

iii. Defendants are proved to have perfected their title by way of adverse possession.

III. Analysis and Discussion:-

5. This Court has considered the submissions of the learned counsel for the appellants and perused the judgments passed by the Courts below along with the requisitioned record.

6. With respect to the first submission, it may be noted that initially in order to prove the sale deed dated 15.10.1928, executed by Sh. Nikke Shah and Sh. Fajje Shah, the plaintiffs produced a certified copy of the sale deed from record of Civil Suit No.14/31.08.1967, which was decided on 31.01.1969 because the record in the office of Registrar, Ferozpur, was damaged in the floods. The application was filed for permission to lead secondary evidence, which was allowed by the trial Court. Thereafter, plaintiffs also produced certified copies of the sale deeds from the office of the Registrar, where the record was salvaged. The plaintiffs in the second suit also examined Sh. Madan Gopal son of Sh. Lal Chand (scribe), who proved that in the register of the deed writer, there was entry of sale deed executed by Sh. Nikke Shah and Sh. Fajje Shah in favour of Sh. Mehtab Mal at serial No.1477, whereas, there is another entry at serial No.1472, which related to execution of sale deed by Sh. Nikke Shah and Sh. Fajje Shah in favour of the Sh. Sadhu Ram. Thus, the submission of learned counsel for the appellant lacks merit.

7. With respect to the second submission, it may be noted that in both the separate suits, distinct plaintiffs claim possession of separate specified plots. Learned counsel for the appellants has failed to prove that



Punjab Wakf Board was necessary party to the suit.

8. Moreover, the appellant neither called upon the trial Court nor the First Appellate Court to frame distinct issue. It will not be appropriate for this Court to permit the appellants to take up new objection for the first time in regular second appeal. Moreover, only the necessary and proper parties are required to be impleaded while deciding the suit.

9. With regard to the last submission, it may be noted that both the Courts have found that the appellants have failed to prove that they have perfected their title by adverse possession. It has been found by both the Courts below that defendants came into possession in 1991.

10. In any case, the defendants had only constructed a wall and installed a hand pump which acts would not be sufficient to prove open, hostile and adverse possession.

IV. Decision:-

11. Consequently, finding no merit, the appeals are dismissed.

12. All the pending miscellaneous applications, if any, are also disposed of.

27th May, 2025

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*