



In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1289 of 2019 (O&M)

Date of Decision: 08.05.2025

Tule Ram

... Appellant(s)

Versus

Ishwar Singh (Now Deceased) through his Legal Representatives and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Rajiv Kataria and Ms. Neelam Choudhary and
Ms. Dolly Shivani, Advocates, for the appellant(s).

Mr. Akash Vashisth, Advocate
for respondents No.1 to 5.

Anil Kshetarpal, J.

CM-3194-C-2019

1. For the reasons stated in the application, the same is allowed and delay of 253 days in refiling the appeal is condoned.

RSA-1289-2019

I. Brief Facts of the Case

2. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

3. The defendant assails the correctness of the concurrent findings of facts arrived at by both the Courts below while decreeing the plaintiffs'

suit for the grant of decree of possession with consequential relief of mandatory injunction with respect to the plot measuring 7 marlas comprised in killa No. 373.

4. In substance, the plaintiffs claim that they are owners of the land measuring 1 kanal 9 marlas comprised in killa/plot No. 373 but they are in actual possession of the land measuring 1 kanal 2 marlas whereas the remaining land measuring 7 marlas has been encroached upon by the defendant. The plaintiffs filed the suit after getting the property demarcated when it was found that the defendant has encroached upon the portion of their plot measuring 7 marlas.

5. The defendant contested the suit on the ground that he is a central government employee posted in Delhi and the house was constructed 30 years back. His house is in the land comprised in khasra No. 374. In the alternative, he also claimed title by way of adverse possession. Both the Courts below decreed the plaintiffs' suit.

6. On 07.05.2025, after hearing the learned counsel representing the parties, the following order was recorded:-

“The learned counsel representing the parties have been heard at length. In substance, the dispute is with regard to encroachment on the plaintiffs' property by the appellant(defendant).

During the course of arguments, the court suggested fresh demarcation with GPS enabled theodolite (Total Station Machine) to put an end to the controversy.

Mr. Bir Singh son of Om Parkash (respondent no.4), who is present in Court, has no objection.

It has been clarified that after the fresh demarcation, no further objection against the report shall be entertained and the

suit shall be deemed to have been decided in accordance therewith.

The learned counsel representing the appellant prays for a short accommodation.

List, in the urgent list, on 08.05.2025.”

II. Arguments

7. Today, the learned counsel representing the appellant submits that the appellant does not agree to the aforesaid proposal of the Court. Hence, the arguments in the main appeal have been heard.

8. The learned counsel representing the appellant has made the following two submissions:-

- i) The demarcation of the property was carried out in the absence of the defendant (appellant), hence, it could not be relied upon.
- ii) The defendant constructed the house more than 30 years before filing of the suit. Hence, he perfected his title by way of adverse possession.

9. Per contra, the learned counsel representing the respondents submits that the plaintiffs are prepared to get the property re-demarcated. However, it is the defendant who is not prepared. He further submits that encroachment on the disputed property would be sufficient to prove that the defendant has perfected his title.

III. Analysis and Discussion

10. This Court has considered the submissions of the learned counsel representing the parties.

11. In this case, the plaintiffs, before filing the suit, applied for demarcation which was carried out by the officer of the revenue department.

The aforesaid report was produced and proved during the course of trial. Moreover, the appellant had sufficient opportunity to get the property demarcated and produce evidence before the Trial Court or the First Appellate Court.

12. Mere long possession is not sufficient to establish adverse possession. To prove adverse possession, the claimants must demonstrate continuous, open and hostile possession of a property and must also show that their possession was exclusive. In this case, the defendant, by mistake, entered upon certain portion of the property of the plaintiffs. Such possession would not be sufficient to prove adverse possession in the absence of evidence to prove that the defendant has forcibly entered into possession and has continued in hostile possession against the plaintiffs.

IV. Decision

13. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of facts arrived at by both the Courts below. Hence, the present appeal is dismissed.

13. The miscellaneous application(s) pending, if any, shall stand disposed of.

**(Anil Kshetarpal)
Judge**

May 08, 2025
"DK"

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No