



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**RSA-1275-2024 (O&M)  
Reserved on : 05.08.2025  
Pronounced on : 19.08.2025**

Harday (deceased) through his LRs .....Appellants

VERSUS

Mahender Singh (deceased) through his LRs & Anr. ....Respondents

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Sanjay Verma, Advocate for the appellants.

Mr. Amit Jain, Advocate for the respondents.

**ALKA SARIN, J.**

1. Present appeal has been preferred by the defendant No.1-appellants aggrieved by the judgment and decree dated 05.01.2022 passed by the Trial Court decreeing the suit of the plaintiff-respondents and the judgment and decree dated 30.01.2024 by the First Appellate Court dismissing their appeal.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondents herein filed a suit averring therein that they are owners in possession of ancestral land comprised in Khewat No.66 Khata No.76 Rect. No.32 Killa No.3 (10-15) situated in the revenue estate of Village Moja Rani-Ka-Singula, Tehsil Sohna, District Gurgaon whereon the residential house of the plaintiff-respondents has been constructed apart from sheds for cattle and storing fodder. It was the case set up that the defendant-appellants

were allowed to reside on a portion of the land while they were serving the plaintiff-respondents and that about 3 to 4 years back the defendant-appellants ceased to serve the plaintiff-respondents and the plaintiff-respondents asked the defendant-appellants to vacate the disputed portion of the land. Hence, the suit. In the written statement the defendant-appellants raised preliminary objections qua maintainability and *locus standi* etc. On merits it was stated that the defendant-appellants had acquired ownership by way of adverse possession as they were using the disputed portion of the land since the time of their ancestors. Replication was filed.

3. On the basis of pleadings of the parties the following issues were framed :

1. Whether the plaintiffs are entitled to a decree of permanent injunction and mandatory injunction to direct the defendants in respect of the suit property to demolish the Chhappars and semi construction and vacate the suit property ? OPP
2. Whether the plaintiffs are entitled to a decree of possession in alternative and decree of permanent injunction restraining the defendants from making any alternation and from raising any sort of construction to be passed in favour of plaintiffs and against the defendant with costs ? OPP
3. Whether the suit of the plaintiff is not maintainable ? OPD
4. Whether the suit is bad for non-joinder of necessary parties ? OPD

5. Whether the plaintiff has no locus standi and no cause of action to file the present suit ? OPD

6. Whether the plaintiff has not come to the court with clean hands and has suppressed true and material facts from the Court ? OPD

7. Whether the plaintiffs are estopped from filing the present suit due to his own laches, delay act and conduct ? OPD

8. Relief.

4. Vide judgment and decree dated 05.01.2022 the Trial Court decreed the suit of the plaintiff-respondents. Aggrieved by the same an appeal was preferred by the defendant No.1-appellants herein which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 30.01.2024. Hence, the present regular second appeal.

5. The learned counsel for the defendant No.1-appellants would contend that there was enough evidence on the record to show that the defendant No.1-appellants were in adverse possession of the suit property. It is further the contention that the defendant No.1-appellants had produced on record an electricity bill and an agreement to sell dated 10.12.2004 which showed their ownership over the suit property by way of adverse possession.

6. *Per contra* the learned counsel for the plaintiff-respondents would contend that the plea of adverse possession was rejected by both the Courts inasmuch as no date was forthcoming as to when the adverse possession commenced in the present case. The learned counsel for the plaintiff-respondents would further contend that the pleadings are totally

bereft of any details since when the defendant No.1-appellants are in adverse possession.

7. Heard.

8. In the present case the only plea raised by the learned counsel for the defendant No.1-appellants is that they were in adverse possession of the suit property which stood proved by way of cogent evidence. Firstly, a perusal of the written statement reveals that there is no date forthcoming as to since when the defendant No.1-appellants are claiming themselves to be in adverse possession. Though it has been stated in the written statement that they have been in possession of the suit property since the time of their ancestors, however, no pleadings qua the date were stated in the written statement. Further still, the electricity bill, which has been relied upon by the learned counsel for the defendant No.1-appellants to contend that the said bill would show the possession of the defendant No.1-appellants, cannot be accepted inasmuch as the said bill is in the name of one Anita who is not a party to the *lis*. Infact, there is not even an averment to this effect that there was any electricity meter in the name of Anita in the suit property. Though before the Trial Court no agreement to sell was set up, however, before the First Appellate Court an agreement to sell dated 10.12.2004 was set up by the defendant No.1-appellants which was rightly rejected by the First Appellate Court in the absence of any pleadings. Hon'ble Supreme Court in the case of **Dagadabai (Dead) By Lrs vs Abbas @ Gulab Rustum Pinjari [2017 (13) SCC 705]** held as under :

*“15. Third, the plea of adverse possession being essentially a plea based on facts, it was required to be proved by the party raising it on the basis of proper*

*pleadings and evidence. The burden to prove such plea was, therefore, on the defendant who had raised it. It was, therefore, necessary for him to have discharged the burden that lay on him in accordance with law. When both the courts below held and, in our view, rightly that the defendant has failed to prove the plea of adverse possession in relation to the suit land then such concurrent findings of fact were unimpeachable and binding on the High Court.*

16. *Fourth, the High Court erred fundamentally in observing in para 7 that, “it was not necessary for him (defendant) to first admit the ownership of the plaintiff before raising such a plea”. In our considered opinion, these observations of the High Court are against the law of adverse possession. It is a settled principle of law of adverse possession that the person, who claims title over the property on the strength of adverse possession and thereby wants the Court to divest the true owner of his ownership rights over such property, is required to prove his case only against the true owner of the property. It is equally well settled that such person must necessarily first admit the ownership of the true owner over the property to the knowledge of the true owner and secondly, the true owner has to be made a party to the suit to enable the Court to decide the plea of adverse possession between the two rival claimants.*

17. *It is only thereafter and subject to proving other material conditions with the aid of adequate evidence on the issue of actual, peaceful, and uninterrupted continuous possession of the person over the suit property for more than 12 years to the exclusion of true owner with the element of hostility in asserting the rights of ownership to the knowledge of the true owner, a case of adverse possession can be held to be made out which, in turn, results in depriving the true owner of his ownership rights in the property and vests ownership rights of the property in the person who claims it.*

18. *In this case, we find that the defendant did not admit the plaintiff's ownership over the suit land and, therefore, the issue of adverse possession, in our opinion, could not have been tried successfully at the instance of the defendant as against the plaintiff. That apart, the defendant having claimed the ownership over the suit land by inheritance as an adopted son of Rustum and having failed to prove this ground, he was not entitled to claim the title by adverse possession against the plaintiff."*

9. **In Ravinder Kaur Grewal vs. Manjit Kaur [(2019) 8 SCC 729]** it was *inter-alia* held that :

*"60. The adverse possession requires all the three classic requirements to co-exist at the same time, namely, nec vi i.e. adequate in continuity, nec clam i.e. adequate*

*in publicity and nec precario i.e. adverse to a competitor, in denial of title and his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it. Adverse possession cannot be decreed on a title which is not pleaded. Animus possidendi under hostile colour of title is required. Trespasser's long possession is not synonymous with adverse possession. Trespasser's possession is construed to be on behalf of the owner, the casual user does not constitute adverse possession. The owner can take possession from a trespasser at any point in time. Possessor looks after the property, protects it and in case of agricultural property by and large the concept is that actual tiller should own the land who works by dint of his hard labour and makes the land cultivable. The legislature in various States confers rights based on possession."*

10. In the present case there are neither any pleadings nor any evidence regarding the factum as to when the defendant No.1-appellants came in possession of the suit property nor the nature of its possession. In the absence of any evidence to prove the plea of adverse possession, the same cannot be accepted. The learned counsel for the defendant No.1-appellants has not been able to refer to any cogent evidence, oral or documentary, led by the defendant No.1-appellants to prove that their possession was peaceful, open and continuous. A person seeking to establish

his adverse possession has to show that his possession is adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. In the present case no credible evidence is available on the record to prove the stand taken by the learned counsel for the defendant No.1-appellants. The learned counsel for the defendant No.1-appellants has been unable to point to any evidence to show as to how the current findings recorded by both the Courts are erroneous or perverse. No cogent or reliable evidence has been shown to the Court which would even remotely establish that the defendant No.1-appellants were in adverse possession of the suit property. This Court finds no reason to differ from the findings returned by both the Courts. No other point has been argued.

11. In view of the above, I do not find any merits in the present appeal. No question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

19.08.2025  
jk

( ALKA SARIN )  
JUDGE

NOTE: Whether speaking/non-speaking: Speaking  
Whether reportable: YES/NO