



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

RSA No.3411 of 1987 (O&M)

Reserved on : 10.07.2025.

Pronounced on : 22.08.2025.

Mahabir (since deceased) through LRs and others

...Appellants

Vs

Sat Narain (since deceased) through LRs and others

...Respondent

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Argued by: Mr. Sapan Dhir, Advocate and
Mr. Yogesh, Advocate for the appellants
(through hybrid mode).

Mr. Kanwal Goyal, Advocate
for the respondents.

VIKRAM AGGARWAL, J

This is defendants second appeal against the judgment and decree dated 28.10.1987, passed by the Court of Additional District Judge, Bhiwani, dismissing the appeal filed against the judgment and decree dated 10.09.1985 passed by the Court of Sub-Judge Ist Class, Bhiwani, vide which the suit for permanent injunction and possession filed by the plaintiffs-respondents was decreed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. The plaintiffs (Sat Narain and Mohan Lal) were both sons of one Sheonand s/o Ram Karan. Proforma defendants No.8 and 9 (Ravi Dutt and Bharat Lal) were also his sons whereas proforma defendant No.10 (Smt. Parwati) was his daughter and proforma defendant No.11 (Smt. Sheobai) was his widow. The plaintiffs instituted a suit for permanent injunction

restraining defendants No.1 to 7 (the contesting defendants) from interfering into the possession of the plaintiffs over site marked by letters ABCD in the accompanying site plan and mandatory injunction directing the defendants to demolish the construction raised on the site as marked by letter DCEFGHE and to hand over the possession thereof. The case set up was that Ram Karan was the owner in possession of a plot marked as ABEJKLMNOGHED, situated in Village Sohasra, Tehsil and District Bhiwani in the site plan. After the death of Ram Karan, Sheonand inherited the said plot. Sheonand expired in 1963 and after his death, the plaintiffs and proforma defendants became owners of the said plot.

3.1 It was averred that the plaintiffs were residents of Sangrur and use to visit Village Sohasra occasionally. Defendant No.9 was employed in the Indian Air Force and proforma defendant No.10 was married and settled in her matrimonial home. Proforma defendant No.11 was also residing with the plaintiffs at Sangrur. Only proforma defendant No.8 resided at Sohasra. It was averred that plaintiffs and proforma defendants had constructed a residential house on a portion of the plot shown by letter BIJKLMNOGFL. Some land was kept in the form of Chabutras and the remaining portion (ABCEFGHED) was kept vacant for the purposes of construction of shops. It is this portion which is in dispute.

3.2 It was averred that defendants No.1 to 3, taking advantage of the absence of the plaintiffs and proforma defendants, constructed a shop and a Chabutra on the eastern side of the plot in dispute. The shop and Chabutra were marked by letters D C F E and D E F GH in the site plan.

3.3 On 05.10.1982, plaintiff No.1 had come to the Village to appear in a case when he came to know about the construction. Upon having raised

objection, he was told that defendants No.2 to 6 had purchased the land marked as ABCDEGHED from defendant No.7 vide registered sale deed dated 24.09.1982. It was alleged that the said sale deed was bogus as defendant No.7 had no right or interest in the disputed site and, therefore, he could not have transferred it to defendants No.2 to 6. The defendants also intended to raise construction of shops over the land marked as ABCD to which the plaintiffs objected. Since the defendants were not acceding to the requests being made by the plaintiff, the suit was instituted.

4. Defendants No.1 to 7 submitted a joint written statement raising preliminary objections as regards maintainability, *locus standi*, cause of action, estoppel, defendants no.1 to 6 being bona fide purchasers for valuable consideration without notice etc. On merits, the case set up by the plaintiffs was denied. It was averred that the disputed land was never a plot but was a house in which defendant No.7 used to reside in his own right as owner for the last more than 30 years openly, continuously and to the knowledge of plaintiffs and proforma defendants. It was averred that defendants No.1 to 6 had purchased the disputed site after making inquiries and having incurred a sum of ₹20,000/- even after its purchase.

5. Defendants No.8 to 11 did not contest the suit, though initially they were being represented by a counsel. However, no written statement filed.

6. Replication to the written statement filed by defendants No.1 to 7 was instituted in which the averments made in the written statement were denied and those made in the plaint were reiterated.

7. From the pleadings of the parties, following issues were framed by the learned trial Court:-

1. Whether the plaintiffs are owners and in possession of the property in dispute, as alleged? OPP.
2. Whether the plaintiffs are entitled to the relief claimed? OPP.
3. Whether the suit is not maintainable in the present form? OPD.
4. Whether the plaintiffs have no cause of action to file the suit? OPD.
5. Whether the plaintiffs are estopped by their acts and conduct from filing the present suit? OPD.
6. Whether defendants Nos.1 to 6 are bona fide purchasers for value without notice, if so, to what effect? OPD.
7. Whether defendants have become owners by way of adverse possession, if so, to what effect? OPD.
- 7A. Whether defendants have effected any improvements bona fide? If so, to what amount and to what effect? OPD.
- 7B. Whether the plaintiffs have introduced unauthorized amendments in the plaint? If so, to what effect? OPD.
8. Relief.

8. Parties led their respective evidence. The trial Court decreed the suit for possession vide judgment and decree dated 10.09.1985 passed by the Court of Sub Judge Ist Class, Bhiwani and appeal against the same was also dismissed by the Court of Additional District Judge, Bhiwani vide judgment and decree dated 28.10.1987, leading to the filing of the present Regular Second Appeal.

9. The trial Court decided all issues except the issue of possession in favour of the plaintiffs. It was held that defendants No.1 to 6 were in possession of the disputed site and, therefore, vide judgment dated

05.08.1985, plaintiffs and proforma defendants were declared to the owners of the disputed site, the possession of which was held to be with defendants No.1 to 6. It was held that under the circumstances, a suit for possession should have been filed by the plaintiffs. Relying upon the law laid down in the case of *Sita Ram Vs. Nunia Mal alias Nanu Mal and others, 1978(1) RLR 776*, the court called upon the plaintiffs to amend their pleadings and include the relief of possession. The plaintiffs were, therefore, given an opportunity to amend the plaint and include the relief of possession.

10. The needful was done. The suit for possession was filed. Amended written statement was also filed. Issues No.7A and 7B were framed which were as under:-

“7-A Whether defendants have effected any improvement bonafidely? If so to what amount and to what effect? OPD.

7-B Whether the plaintiffs have introduced unauthorized amendments in the plaint? If so to what effect? OPD”

11. Parties led their respective evidence after which the learned trial Court decreed the suit vide judgment and decree dated 10.09.1985.

12. Defendants No.1 to 6 preferred an appeal against the said judgment and decree which too was dismissed by the Court of Additional District Judge, Bhiwani vide judgment and decree dated 28.10.1987, leading to the filing the present appeal.

13. Learned counsel for the parties were heard.

14. Sh. Sapan Dhir, learned counsel representing the appellants strenuously urged that both Courts had erred in decreeing the suit filed by the plaintiffs. It was submitted that both Courts erroneously declined the relief of adverse possession despite noticing the fact that the defendants were in possession of the disputed site prior to 30.07.1976. It was submitted that

the onus to prove that the possession of defendant No.7-Makhan Lal was permissive and not hostile was on the plaintiffs and not on the defendants.

14.1. It was also submitted that the relief of possession was barred by limitation as the same could have been sought within a period of 12 years whereas Makhan Lal was in possession of the disputed site much prior to 30.07.1976 and the relief of possession was sought on 07.08.1985.

14.2. It was further argued that the site plan (Ex.D-7) had not been properly considered by both Courts and that the site plan clearly proved the possession of Makhan Lal over the disputed site as regards which, the plaintiffs were duly aware and raised no objection whatsoever at any point of time. It was also submitted that huge improvements had been made over the disputed site by the defendants which was never objected to by the plaintiffs and, therefore, the provisions of Section 51 of the Transfer of Property Act, 1882, would come to the aid of the defendants.

14.3. Learned counsel further submitted that the plaintiffs had been held to be the owners of the disputed site without there being any evidence as regards the same on the file.

14.4. Learned counsel also submitted that the trial Court erred in having granted liberty to the plaintiffs to amend the suit and to include the relief of possession.

15. *Per contra*, Sh. Kanwal Goyal, learned counsel representing the respondents/plaintiffs submitted that there is no illegality in the judgments passed by both Courts. It was submitted that Ram Kishan was allotted a plot measuring 451 sq. yards (Ex.P-2) in 1947. The said plot was inherited by Sheo Nath after the death of Ram Kishan and after his death, the plaintiffs and defendants No. 8 to 11 became its owners.

16. Plaintiffs came to know that defendant no.7-Makhan Lal was trying to alienate the property as a result of which an application (Ex.D-4) was moved before the learned Sub-Registrar. However, this application was declined stating that there was no order of stay as a result of which sale deed dated 24.09.1982 (Ex.D-3) was executed by defendant No.7 in favour of defendants No.1 to 6.

16.1. Learned counsel submitted that the trial Court rightly held that the documents Ex.P-2, P-3 and P-4 clearly proved that the disputed site belonged to Ram Kishan. It was submitted that it had also rightly been held by both Courts that defendants No.1 to 6 could not prove that they were in adverse possession of the disputed site.

16.2. Learned counsel also submitted that the permission to amend the plaint and include the relief of possession was also rightly granted and no challenge was laid to the said decision. Instead, while complying with the said decision, the defendants filed an amended written statement, issues No.7 A and 7B were framed and parties led their respective evidence as well. It was submitted that under the circumstances, it would not be open for the defendants to now raise the plea that liberty to amend the suit should not have been granted by the trial Court.

16.3. As regards adverse possession, learned counsel submitted that there was no pleading in the written statement as to when the possession has become adverse and the date from which it had become hostile. Learned counsel submitted that the ingredients of adverse possession, as have been laid down repeatedly by the Hon'ble Apex Court were not fulfilled and, therefore, it was rightly held that it had not been proved that the defendants were in adverse possession of the disputed site.

16.5. It was submitted that it was the specific case of defendant No.7 that the disputed site had been purchased by his father Ram Kumar from Ram Karan, which he could not prove but once this claim of title was raised, he could not have raised the plea of adverse possession.

16.6. It was further submitted that defendants No.1 to 6 were not bona fide purchasers as they were aware about the dispute having been raised by the plaintiffs when their statement was recorded by the Sub-Registrar (Ex.D-6) on 24.09.1982.

16.7. It was also argued that defendant No.7 himself did not have any title, and, therefore, he could not have passed a better title than he himself had.

16.8. As regards construction etc., having been raised by defendants No.1 to 6, it was submitted that no evidence to prove the said fact was led.

17. In support of his contentions, learned counsel placed reliance upon judgments of this High Court in *Sita Ram Vs. Nunia Mal @ Nanu Mal and others, 1978(1) RLR 776, Ganga Lal Vs. Ved Parkash Kathuria and others, 2022 (1) PLR 583*, and judgments of the Supreme Court of India in *Babu Lal Vs. M/s Hazari Lal Kishori Lal and others, 1982 AIR (Supreme Court) 818, M. Radheshyاملal Vs. V. Sandhya and another, 2024 AIR (Supreme Court) 1595, Karnataka Board of Wakf Vs. Government of India and others, 2004(2) RCR (Civil) 702, Narasamma and others Vs. A. Krishnappa (dead) through LRs, 2020 AIR (Supreme Court) 4178 and S. K.Golam Lalchand Vs. Nandu Lal Shaw @ Nand Lal Keshri @ Nandu Lal Bayes and others, 2024 AIR (Supreme Court) 4193*.

18. I have considered the submissions made by learned counsel for the parties and with their assistance have the perused record.

19. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of ***Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016)6 SCC 157***, followed by the judgments in the case of ***Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317 and Satender and others V/s Saroj and others, 2022(12) Scale 92***. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

20. To prove that the plaintiffs were the owners of the disputed site, plaintiff Sat Narian stepped into the witness box as PW-1 and stated about the ownership of the plaintiffs and proforma defendants. PW-2 Banwari and PW-3 Chandgi supported the said statement. PW-1 Sat Narian also proved the site plan (Ex.P-1). *Quibalas* (Ex.P-2 to P-4) were also produced on record. After going through the same, the Courts rightly recorded a finding that land comprised in Khasra No. 53 measuring 451 sq. yards had been given to Ram Karan who was the grandfather of the plaintiffs and proforma defendants No. 8 to 10 on 18.01.1922 by the Nawab of Loharu. The boundaries of the site were duly proved by documents (Ex.P-3 and P-4) as well which were *quibalas* of adjacent properties. It was, therefore, rightly held that by virtue of quibala (Ex.P-2) dated 18.01.1922, Ram Karan was the owner of the same. On the contrary, defendant No.7, despite claiming that he was owner of the disputed site could not produce any documentary evidence to prove the same and relied only upon bald oral statements which were rightly discarded by both Courts. In-fact, when an objection was raised by

the plaintiffs as regards sale of the disputed site to defendants No.1 to 6, a statement Ex.D-5 was given by defendant No.7 Makhan Lal on 24.09.1982 that the disputed site had been purchased by his ancestors from the ancestors of Sat Narain etc., but again no documentary evidence was produced to prove the same. Both Courts, therefore, rightly found that the plaintiffs and proforma defendants had been proved to be owners of the disputed site, the same having been given to their ancestors on 18.01.1922 by the Nawab of Loharu.

21. As regards possession also, the concurrent finding was that by virtue of sale deed dated 24.09.1982 (Ex.D-1) and other evidence, it had been proved that defendants No.1 to 6 were in possession of the disputed site. The said finding has not been assailed by anyone. The contention raised by learned counsel for the appellants that permission to amend the suit and include the relief of possession should not have been granted is devoid of merit. Concededly, the order was not challenged and has become final. Even amended written statement etc., were filed, issues No. 7 A and 7B were framed, evidence was led and the matter was decided. Be that as it may, in the considered opinion of this Court, the trial Court, in-fact, took a very wise decision by permitting the plaintiffs to amend their suit instead of falling into technicalities.

22. Coming to the issue of adverse possession, once the defendants claimed to be in adverse possession of the disputed site, certain ingredients were required to be proved. In the case of *T. Anjanappa and others Vs. Somalingappa and another*, 2006 AIR SCW 436, the Hon'ble Supreme Court of India elaborately dealt with the issue and laid down as to what a plea of adverse possession was and how it could be proved;

“12. The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property.

13. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. It is a matter of fundamental principle of law that where possession can be referred to a lawful title, it will not be considered to be adverse. It is on the basis of this principle that it has been laid down that since the possession of one co-owner can be referred to his status as co-owner, it cannot be considered adverse to other co-owner. (See [Vidya Devi v. Prem Prakash and Ors.](#) (1995 (4) SCC 496).

14. Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of the rightful owner and tends to extinguish that person's title. Possession is not held to be adverse if it can be referred to a lawful title. The person setting up adverse possession may have been holding under the rightful Owner's title e.g. trustees, guardians, bailiffs or agents. Such persons cannot set up adverse possession.

15. "Adverse possession" means a hostile possession which is expressly or impliedly in denial of title of the true owner.

Under Article 65 of the Limitation Act, burden is on the defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed.

16. Where possession could be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all.

17. An occupation of reality is inconsistent with the right of the true owner. Where a person possesses property in a manner in which he is not entitled to possess it, and without anything to show that he possesses it otherwise than an owner (that is, with the intention of excluding all persons from it, including the rightful owner), he is in adverse possession of it. Thus, if A is in possession of a field of B's, he is in adverse possession of it unless there is something to show that his possession is consistent with a recognition of B's title. (See Ward v. Carttar (1866) LR 1 Eq.29). Adverse possession is of two kinds, according as it was adverse from the beginning, or has become so subsequently. Thus, if a mere trespasser takes

possession of A's property, and retains it against him, his possession is adverse ab initio. But if A grants a lease of land to B, or B obtains possession of the land as A's bailiff, or guardian, or trustee, his possession can only become adverse by some change in his position. Adverse possession not only entitled the adverse possessor, like every other possessor, to be protected in his possession against all who cannot show a better title, but also, if the adverse possessor remains in possession for a certain period of time produces the effect either of barring the right of the true owner, and thus converting the possessor into the owner, or of depriving the true owner of his right of action to recover his property and this although the true owner is ignorant of the adverse possessor being in occupation. (See Rains v. Buxion (1880 (14) Ch D 537).

18. *Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of any person to whom the land rightfully belongs and tends to extinguish that person's title, which provides that no person shall make an entry or distress, or bring an action to recover any land or rent, but within twelve years next after the time when the right first accrued, and does away with the doctrine of adverse possession, except in the cases provided for by [Section 15](#). Possession is not held to be adverse if it can be referred to a lawful title.*

19. *According to Pollock, "In common speech a man is said to be in possession of anything of which he has the apparent control or from the use of which he has the apparent powers of excluding others".*

20. *It is the basic principle of law of adverse possession that (a) it is the temporary and abnormal separation of the property from the title of it when a man holds property innocently against all the world but wrongfully against the true owner; (b) it is possession inconsistent with the title of the true owner.*

21. *In Halsbury's 1953 Edition, Volume-I it has been stated as follows:*

"At the determination of the statutory period limited to any person for making an entry or bringing an action, the right or title of such person to the land, rent or advowson, for the recovery of which such entry or action might have been made or brought within such period is extinguished and such title cannot afterwards be reviewed either by re-entry or by subsequent acknowledgement. The operation of the statute is merely negative, it extinguished the right and title of the dispossessed owner and leaves the occupant with a title gained by the fact of possession and resting on the infirmity of the right of the others to eject him"

22. *It is well recognized proposition in law that mere possession however long does not necessarily means that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action."*

23. Defendant No.7 did not plead as to when he had come in possession of the disputed site. Vague pleadings were made in the written statement. Still further, a plea was taken that the disputed site had been purchased by predecessors of defendant No.7 from the predecessors of plaintiffs. Defendant No.7 therefore raised the plea of title also along with

the plea of adverse possession. Both pleas could not go hand in hand as was laid down by the Supreme Court of India in the case of *Narasamma and others Vs. A. Krishnappa (dead) through LRs (supra)*;

“29. We may also note that on the one hand, the appellants herein have sought to take a plea of bar of limitation vis-à-vis the original defendant claiming that possession came to them in 1976, with the suit being filed in 1989. Yet at the same time, it is claimed that the wife had title on the basis of these very documents. The claim of title from 1976 and the plea of adverse possession from 1976 cannot simultaneously hold. On the failure to establish the plea of title, it was necessary to prove as to from which date did the possession of the wife of the defendant amount to a hostile possession in a peaceful, open and continuous manner. We fail to appreciate how, on the one hand the appellants claimed that the wife of the original defendant, appellant 1 herein, had title to the property in 1976 but on their failure to establish title, in the alternative, the plea of adverse possession should be recognised from the very date.

30. We also find that the reliance placed by learned counsel for the appellants in Ravinder Kaur Grewal & Ors (supra) is also misplaced. The question which arose for consideration before the three Judge Bench was whether, a suit could be maintained for declaration of title and for permanent injunction seeking protection on a plea of adverse possession, or that it was an instrument of defence in a suit filed against such a person. In fact, if one may say, there was, for a long time a consistent view of the Court that the plea could only be of shield and not a sword. The judgment changed this legal position by opining that a plea to retain possession could be managed by the ripening of title by way of adverse possession. However, to constitute such adverse possession, the three classic requirements, which need to co-exist were again emphasized, 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.

31. The question which confronts us is not the aforesaid, but whether simultaneously a plea can be taken of title and adverse possession, i.e., whether it would amount to taking contradictory pleas. In this behalf, we may refer to the four judgments cited by learned counsel for the respondent herein, which succinctly set forth the legal position.

32. In Karnataka Board of Wakf (supra) case, it has been clearly set out that a plaintiff filing a title over the property must specifically plead it. When such a plea of adverse possession is projected, it is inherent in the nature of it that someone else is the owner of the property. In that context, it was observed in para 12 that “...the pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced...”

33. The aforesaid judgment in turn relied upon the judgment in Mohan Lal (Deceased) Thr. LRs.(supra), which observed in para 4 as under:

“4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., upto completing the period of his title by prescription nec vi, nec clam, nec precario. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession

till date of the suit. Thereby the plea of adverse possession is not available to the appellant.”

34. In order to establish adverse possession an inquiry is required to be made into the starting point of such adverse possession and, thus, when the recorded owner got dispossessed would be crucial.

35. In the facts of the present case, this fact has not at all been proved. The possession of Smt. Narasamma, the wife of the defendant, is stated 10(supra) 11P.T. Munichikkanna Reddy & Ors. (supra) to be on account of consideration paid. Assuming that the transaction did not fructify into a sale deed for whatever reason, still the date when such possession becomes adverse would have to be set out. Thus, the plea of adverse possession is lacking in all material particulars.

36. The possession has to be in public and to the knowledge of the true owner as adverse, and this is necessary as a plea of adverse possession seeks to defeat the rights of the true owner. Thus, the law would not be readily accepting of such a case unless a clear and cogent basis has been made out.

37. We may also note another judicial pronouncement in Ram Nagina Rai & Anr. v. Deo Kumar Rai (Deceased) by LRs & Anr. (2019) 13 SCC 324 dealing with a similar factual matrix, i.e., where there is permissive possession given by the owner and the defendant claims that the same had become adverse. It was held that it has to be specifically pleaded and proved as to when possession becomes adverse in order for the real owner to lose title 12 years hence from that time.

38. The legal position, thus, stands as evolved against the appellants herein in advancing a plea of title and adverse possession simultaneously and from the same date.”

24. Even otherwise, once defendant No.7 did not himself have title, he could not have passed a title better than he himself had to defendants

No.1 to 6. Further, defendants No.1 to 6 could not have claimed to be bona fide purchasers of the disputed site as concededly, a dispute had been raised by the plaintiffs before the Sub-Registrar at the time of registration of the sale deed when even defendants No. 1 to 6 were present. They were, therefore, aware that there was a dispute as regards the title of the disputed site.

25. The argument that a suit for possession could not have been filed since defendant No.7 was owner of the disputed site prior to 30.07.1976 is also devoid of merit. There was no specific date given as to from which defendant No.7 was in possession and, therefore, the relief of possession was rightly granted.

26. As regards the protection of the provisions of Section 51 of the Transfer of Property Act on account of construction having been raised over by the defendants over the disputed site in good faith, the said argument is devoid of merit. The trial Court rightly held that any improvements made before becoming owners would not be protected under Section 51 of the Transfer of Property Act. It was also rightly held that in-fact there was no evidence as regards raising of construction and that too in good faith apart from bald statements made by the defendants. Still further, it was not proved as to when the construction was raised. The sale deed (Ex.D-1) shows that the plot was lying vacant on 24.09.1982 when it was sold thereby belying the claim of defendants No.1 to 6 that the construction had been raised prior to execution of the sale deed. Since they were aware of the dispute as regards title, the trial Court rightly held that constructions, even if made could not have been stated to have been made in good faith.

27. The irresistible conclusion of the aforesaid discussion is that there is no illegality in the judgments under challenge warranting interference in second appeal.

That being so, I do not find any merit in the present appeal and the same is accordingly dismissed.

Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

Pronounced on 22.08.2025

Rekha

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