



136 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA-235-2025 (O&M)  
Date of decision : 08.07.2025

Jasbir Singh and others .....Appellants

Versus

Shabeg Singh and others ....Respondents

**CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN**

Present : Mr. Saket Bhandari, Advocate  
for the petitioners.

**PANKAJ JAIN, J. (ORAL)**

Defendants are in second appeal.

2. For convenience, the parties hereinafter are referred to by their original position in the suit, i.e., the appellants as the defendants and the respondents as the plaintiffs.

3. Plaintiffs filed suit for possession claiming themselves to be owners of the suit property and claiming that defendants have illegally encroached upon the property owned by the plaintiffs.

4. The suit was resisted by the defendants raising two fold plea. Defendants pleaded that the suit property in question was purchased by their father after it was sold by Sukha Singh and Lakha Singh by way of writing dated 19.07.1983. Defendants further in Para 5 of the written statement



pleaded that they are in long continuous possession over the suit land as owners.

5. The Trial Court dismissed the suit assigning following reasons:

“20. After hearing the rival please and on a careful perusal of the entire case filed this Court is of the considered view that the broad principle of best balance of probabilities, plaintiffs have miserably failed to prove its case on the basis of following counts:-

- i) Admittedly the suit land falls in the abadi area where several houses have been constructed.
- ii) As per the demarcation report it has been fully proved that on the suit land, houses of the defendants have been constructed over the suit land, wherein they are living since long.
- iii) There is no iota of doubt that presumption of correctness is attached to the revenue records but the presumption is rebuttable one. In the present case also plaintiffs are alleging that in the Jamabandi, they are shown as owners in possession over the suit land but factum of possession has been negated by the demarcation report as well as in their own cross examination before the court, hence this document cannot be relied upon.
- iv) It is well established principle of law that in a civil case it is for the plaintiff to prove its case by bringing cogent and positive evidence but the plaintiffs have miserably failed to prove its case. Apart from jamabandi and girdawari which are revenue records, no proof of ownership of the plaintiffs over the suit land have been placed on the case file which disentitles them from claiming the relief sought for.



- v) Plaintiffs have also admitted signature of Shabeg Singh on the agreement entered into between Shabeg Singh and defendant No.4.
- vi) At the same time it would not be out of place to mention that the present suit is also barred by limitation as per Article 65 of the Indian Limitation Act.
- vii) Last but not the least, defendants have placed electricity bills/ receipts/ connection, chulha tax etc. which again goes on to prove the defendants are in peaceful possession of the houses built over suit land.”

6. Unsuccessful, plaintiffs preferred appeal.

7. In appeal, the findings have been reversed observing that the value of the property being more than Rs.100, the writing propounded by the defendants in their favour alleged to have been executed by Sukha Singh and Lakha Singh would not bestow any right upon them. The title of the plaintiffs stood proved by way of revenue record. Demarcation Report, Exhibit P-4, proved encroachment at the hands of the defendants. The Lower Appellate Court further found that the suit filed by the plaintiffs based on title would be governed by Article 65 of the Limitation Act, 1963 and until & unless defendants come with the date on which their possession became hostile, the plaintiffs cannot be non-suited on the ground of limitation.

8. Counsel for the appellants has assailed the findings recorded by the Lower Appellate Court. He refers to Para 5 of the written statement and



relies upon ratio of law laid down by this Court in the case '**Subhadra Devi vs. Balbir Nath alias Sadhu and other, 2004 AIR Punjab and Haryana 341**'. He submits that once it has been proved on record that the defendants/appellants are in possession for more than 12 years and there is no dispute w.r.t. calculation thereof, it was not incumbent and necessary for the defendants to give the specific date to trace the starting point of their adverse possession.

9. I have heard counsel for the appellants and have carefully gone through records of the case.

10. Present suit is a suit for possession filed by the plaintiffs claiming themselves to be owners and alleging encroachment at the hands of the defendants. So far as the title of the plaintiffs is concerned, the same stands proved by way of revenue record. The revenue record in form of *Jamabandi* having presumption of proof attached to it, has been rightly believed by the Appellate Court in the absence of there being any cogent evidence to rebut the presumption attached thereto. So far as encroachment at the hands of the defendants is concerned, the same stands proved by way of demarcation report Exhibit P-2 which has also gone unrebutted and unchallenged.

11. The plea raised by counsel for the appellants relying upon ratio of law laid down in the case of *Subhadra Devi* (supra) is misplaced and misconstrued.



12. Article 65 of the Limitation Act, 1963 reads as under:

	Description of suit	Period of limitation	Time from which period begins to run
65.	<p>For possession of immovable property or any interest therein based on title.</p> <p><i>Explanation.</i>—For the purposes of this article—</p> <p>(a) where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession;</p> <p>(b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies;</p> <p>(c) where the suit is by a purchaser at a sale in execution of a decree when the judgmentdebtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession.</p>	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

13. Issue of adverse possession was extensively dealt by this Court in **RSA No.1897 of 1999** titled as '**Harbhajan Singh (since deceased) through LRs and others vs. Manmohan Singh**', observing as under:



As per the settled proposition of law, possession howsoever long it may be, cannot be held to be adverse. As per the classical requirement, a possession to be an adverse possession needs to be nec vi, nec clam, nec precario i.e. the possession must be adequate in continuity, in publicity and adequate in extent to show that it is a possession adverse to the competitor. Possession itself does not amount to ownership. While ownership is de jure recognition of a claim to property, possession is de facto counter part thereof. As per classic law, possession implies:-

- (i) *Corpus i.e. physical control or actual possession;*
- (ii) *Animus i.e. the desire to possess.*

Both these elements are necessary to constitute possession.

9. There is no statutory definition of adverse possession. In law, it is understood to be possession inconsistent with the title of the true owner. It implies the possession which is:-

- (a) *commenced in wrong; and*
- (b) *maintained against right.*

10. Supreme Court in ***S.M. Karim vs. Bibi Sakina, 1964 AIR Supreme Court 1254***, while laying down the requirements of adverse possession, observed as under:-

“xx xx

Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. There is no evidence here when possession became adverse, if it at all did, and a mere suggestion in the relief clause that there was an uninterrupted possession for " several 12 years" or that the plaintiff had acquired " an absolute title" was not enough to raise such a plea. Long possession is not



necessarily adverse possession and the prayer clause is not a substitute for a plea.”

11. Same was reiterated in *D.N. Venkatarayappa and another vs. State of Karnataka and others, 1997 AIR Supreme Court 2930*, observing as under:-

“xx xx

Further, this Court, in the case of *Danappa Revappa Kolli v. Gurupadappa Kallappa Pattana Shetti*, ILR (1990) Karnataka 610, while referring to the decision of the Supreme Court in *Kshitish Chandra's case (supra)*, relied upon by Sri Narayana Rao in support of the plea of adverse possession, has observed that apart from that actual and continuous possession which are among other ingredients of adverse possession, there should be necessary animus on the part of the person who intends to perfect this title by adverse possession. The observations made in the said decision reads thus:

“5. ... Apart from actual and continuous possession which are among other ingredients of adverse possession, there should be necessary animus on the part of the person who intends to perfect his title by adverse possession. A person who under the bona fide belief thinks that the property belongs to him and as such he has been in possession, such possession cannot at all the adverse possession because it lack necessary animus for perfecting title by adverse possession.”

Therefore, it is clear that one of the important ingredients to claim adverse possession is that the person who claims adverse possession must have set up title hostile to the title of the true owner.”

12. Following the same view, Supreme Court in *Karnataka Board of Wakf vs. Govt. of India and others (2004) 10 SCC 779* held the same thread of reasoning to observe that:-



“11. In the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of true owner. It is a well- settled principle that a party claiming adverse possession must prove that his possession is 'nec vi, nec clam, nec precario', that is, peaceful, open and continuous. The possession must be 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. (See : *S.M. Karim v. Bibi Sakina [AIR 1964 SC 1254]*, *Parsinni v. Sukhi [(1993) 4 SCC 375]* and *D.N. Venkatarayappa v. State of Karnataka [(1997) 7 SCC 567]*. Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. [*Mahesh Chand Sharma (Dr.) v. Raj Kumari Sharma [(1996) 8 SCC 128]*”.



13. Commenting upon the requisite pleadings and necessity to establish the facts and absence of equities in the case of adverse possession, Supreme Court in *Dr. Mahesh Chand Sharma vs. Raj Kumari Sharma, 1996 AIR Supreme Court 859*, observed as under:-

“xx xx x

We may emphasise that a person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all the facts necessary to establish his adverse possession. For all the above reasons, the plea of limitation put forward by the appellant, or by Defendant Nos.2 to 5 as the case may be is rejected.”

Therefore, to prove the plea of adverse possession :-

- (a) The plaintiff must plead and prove that he was claiming possession adverse to the true owner;
- (b) The plaintiff must plead and establish that the factum of his long and continuous possession was known to the true owner;
- (c) The plaintiff must also plead and establish when he came into possession; and
- (d) The plaintiff must establish that his possession was open and undisturbed.

It is settled law that by pleading adverse possession, a party seeks to defeat the rights of the true owner, and therefore, there is no equity in his favour. After all, the plea is based on continuous wrongful possession for a period of more than 12 years. Therefore, the facts constituting the ingredients of adverse possession must be pleaded and proved by the plaintiff.”

14. Supreme Court in *M. Radheshymlal vs. V. Sandhya and another, reported as 2024 AIR (Supreme Court) 1595* reiterated the same principles.



14. The specific plea raised in Para 5 of the Written Statement, reads as under:

“5. That Para no. 5 of the plaint is wrong and denied. However, it is submitted that the plaintiffs have no concern with the suit property. Neither, they are owner nor in possession property since 1983 rather, the answering defendants are in actual physical possession of the hove said house being exclusive owner and they are living in their respective families in their respective portions. It is further submitted that the plaintiffs are still adamant to dispossess the answering defendants from the property in dispute illegally and forcibly, in collusion with the defendant no. 4. The detailed reply has also been given above in the foregoing paras.”

15. The plea raised in Para 5 is that the defendants are in actual physical possession of the house being exclusive owners. It is nowhere alleged or pleaded as to when the possession of the defendants became hostile. Thus, the plaint cannot be said to have been filed beyond prescribed period of limitation.

16. In view of above, finding no merits in the present appeal, the same is dismissed.

**July 08, 2025**

**(Pankaj Jain)**

**Dpr**

**Judge**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No