



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

**RSA-773-1992 (O&M)
Reserved on :- 12.01.2026
Date of Pronouncement:-21.01.2026
Uploaded on:-22.01.2026**

Ishwar Minor son of Parkash

... Appellant

Versus

Sita Ram (Now Deceased) through his LRs

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Amit Jain, Senior Advocate with
Mr. Aryaman Thakur, Advocate
for the appellant.

Mr. Birender Singh Rana, Senior Advocate with
Mr. R.S. Malik, Advoate,
Mr. Nayandeep Rana, Advocate and
Mr. Neeraj Mann, Advocate
for the respondents.

VIRINDER AGGARWAL, J.

1. The appellant/plaintiff, feeling deeply aggrieved by the judgment and decree dated 04.12.1991 passed by the learned Additional District Judge, Sonepat whereby the well-reasoned and duly considered judgment and decree dated 03.08.1989 rendered by the learned Sub-Judge IIInd Class, Sonepat, was unjustifiably reversed most respectfully invoke the appellate jurisdiction of this Court by way of the present Regular Second Appeal (for short, "RSA").



1.1. It is respectfully submitted that the impugned judgment and decree stand vitiated by patent perversity, grave misdirection in law, and a demonstrably erroneous appreciation of the evidentiary material on record. The learned First Appellate Court failed to apply the correct legal principles governing appreciation of evidence, misread material documents, and proceeded on assumptions wholly unsupported by the record, thereby causing a substantial miscarriage of justice.

1.2. The appellant further submit that the findings recorded by the learned Trial Court were based on a meticulous examination of the oral and documentary evidence, and that the decree passed therein was lawful, just, and in strict conformity with the settled legal position. The reversal of such a well-reasoned and judiciously founded decree, without adequate basis or cogent reasoning, renders the impugned appellate judgment legally unsustainable.

1.3. In these circumstances, it is most humbly prayed that this Court be pleased to set aside the impugned judgment and decree dated 04.12.1991, and restore the sound, reasoned, and lawful decree dated 03.08.1989 passed by the learned Sub-Judge IIInd Class, Sonepat, so as to secure the ends of justice.

2. The sequence of events antecedent to, and culminating in, the present appeal may be succinctly set out as under -

“The facts, briefly stated, which have culminated in the filing of the present appeal are as follows. Ishwar, son of Parkash, the real nephew of Sita Ram defendant-respondent herein instituted a suit for possession, asserting his ownership over the land comprised in Khewat No. 138 min, Khata No.



183, Rectangle and Killa No. 7/19, measuring 8 kanals 0 marlas, situated within the revenue estate of village Abbaspur Garhi Bala, Tehsil and District Sonepat. Sita Ram is the real elder brother of the plaintiff's father.

It was the plaintiff's case that the land in dispute had been entrusted by Parkash, his father, to the defendant for purposes of cultivation, and that the defendant's possession was, therefore, that of a lessee. Subsequently, Parkash, the plaintiff's father, got the land duly transferred in favour of the plaintiff, thereby vesting ownership rights in him. Upon acquiring title, the plaintiff requested the defendant-appellant to hand over possession of the suit land, but the latter refused to do so on 25.07.1987. This necessitated the filing of the present suit for possession."

3. Upon due service of summons, the defendant entered appearance before the learned Trial Court and proceeded to file their written statement, wherein they set forth the following submissions:-

"The defendant, Sita Ram, contested the suit and asserted that the plaintiff has no cause of action, at least insofar as Killa No. 7/19 is concerned. He further pleaded that the plaintiff lacks locus standi to institute the suit, as the defendant-appellant has already perfected his title over the suit land by way of adverse possession. According to him, his hostile possession commenced on 16.06.1963 and has, since then, remained open, continuous, uninterrupted, and to the full



knowledge of the plaintiff and his father, being completely hostile to their rights.

It was additionally averred that Parkash, the plaintiff's father, had filed an application on 24.02.1964 seeking correction of the Khasra Girdawari entries; however, the said application was dismissed on 08.03.1965. An appeal preferred before the Collector also met the same fate and was dismissed on 28.12.1965. The defendant-appellant thus contended that the question of delivering possession does not arise, as the Khasra Girdawari entries stand in his favour, and by virtue of his long, continuous, hostile, and adverse possession, he has become the owner of the suit land."

4. Plaintiff-Ishwar Singh thereafter filed a comprehensive and unequivocal replication, wherein he most categorically repudiated each and every material assertion advanced by the defendant. At the very outset, the plaintiff firmly denied that the defendant had ever been in lawful or uninterrupted possession of the suit land since 1963, or that any such alleged possession could, by any stretch of legal interpretation, be regarded as open, continuous, hostile, or adverse to the plaintiff's proprietary rights. The plaintiff further clarified that although his father had, on an earlier occasion, acknowledged the fact of the defendant's forcible entry upon the suit land, such unlawful occupation never ripened into adverse possession in the eyes of law. On the contrary, the defendant's continued presence over the suit property was always referable to, and circumscribed by, the status of a lessee an arrangement wholly incompatible with any claim of hostile or adverse possession.



4.1. As regards the defendant's averments concerning the application purportedly filed by the plaintiff's father for correction of the *Khasra Girdawari* entries and the alleged dismissal thereof along with the dismissal of the connected appeal the plaintiff neither admitted nor explicitly denied such statements. He asserted, however, that the mere absence of specific traversal could not, in law, confer upon the defendant any entitlement to presume that the said averments stood admitted. The plaintiff categorically maintained that the defendant was attempting to draw unfounded, unwarranted, and legally untenable inferences from the pleadings, and that no presumption of admission could arise in the manner sought to be projected by the defendant.

4.2. Upon a careful consideration of the pleadings exchanged between the parties, the learned Trial Court was pleased to frame the following issues for the just, effective, and proper adjudication of the controversy inter se the parties:-

1. *Whether the plaintiff is owner of the suit land as alleged ? O.P.P.*
2. *Whether the plaintiff has no cause of action as for as killa Ne.7/19 as alleged ? O.P.P.*
3. *Whether the defendant has become owner of the suit land by adverse possession ? OPP.*
4. *Whether the plaintiff has no locus standi to file the present suit ? O.P.D.*
5. *Whether the defendant is entitled to special costs as alleged ? OPD.*
6. *Relief.*

5. Both parties were afforded a full, fair, and effective opportunity to lead evidence in support of their respective stands. After the completion of the evidentiary process, and upon hearing the learned counsel for both



sides with the attention and consideration the matter required, the learned Trial Court proceeded to adjudicate the controversy on its merits and was pleased to decree the suit. The Court recorded, *inter alia*, the following well-reasoned and material observations:-

“In light of the foregoing findings, the plaintiff has successfully established his case. Accordingly, the suit is decreed in favour of the plaintiff, declaring him entitled to the possession of the suit land as detailed in paragraph No. 1 of the plaint. The parties are, however, left to bear their own costs. Let a decree-sheet be drawn up accordingly, and the case file be consigned to the record room upon due compliance.”

6. Aggrieved by the aforesaid judgment and decree of the learned Trial Court, the respondents/appellants carried the matter in appeal before the learned First Appellate Court. Upon re-appreciation of the record and after hearing learned counsel for the parties, the learned First Appellate Court was pleased to allow the appeal, rendering the following observations:-

“In view of the above discussion, I am of the considered opinion that since Kharif 1963, the possession of Sita Ram has been open, hostile, and continuous to the knowledge of Parkash as well as his son Ishwar; indeed, Parkash himself admitted the forcible and hostile nature of such possession. As the suit was instituted on 30.07.1987, by which time Sita Ram had successfully perfected his title by way of adverse possession, the learned trial Court ought to have decided all the issues against the plaintiff, but failed to do so. The findings recorded



by the trial Court are contrary to the facts and the settled principles of law and are, therefore, set aside.

Consequently, the appeal succeeds and is hereby allowed.

The suit filed by the plaintiff, Ishwar, is dismissed. However, the parties are left to bear their own costs. Let a decree-sheet be drawn accordingly, and the file be consigned to the record room after due compliance.”

6.1. Assailing the findings and conclusions recorded by the learned First Appellate Court, the appellants/plaintiffs instituted the present Regular Second Appeal. Upon admission of the appeal, notices were duly issued, whereafter the respondent through his legal representatives and represented by learned counsel entered appearance and contested the appeal on all grounds. For the just, proper, and complete adjudication of the matter, the entire record of the Courts below was requisitioned and has been duly examined.

7. I have heard learned counsel for the parties and considered their submissions in conjunction with the pleadings, evidence, and the findings recorded by the courts below. The entire record has been meticulously analyzed to determine '*whether the impugned judgment and decree suffer from any legal infirmity or error justifying interference by this Court?*

8. 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.

9. Learned counsel for the appellants contended, at the very outset, that once it stands admitted on record that the respondent-defendant was inducted into permissive possession, the legal burden squarely rested upon the respondent-defendant to establish, by clear and convincing evidence, that he subsequently asserted ownership over the suit property openly, unequivocally, and to the exclusion of the appellants/plaintiffs. It was urged that no such cogent proof was ever adduced, and therefore, the plea of adverse possession was wholly untenable.

9.1. It was further argued that the learned First Appellate Court committed a manifest and grave error of law in placing reliance upon the dismissal of the application for correction of the *Khasra Girdawari* and, even more erroneously, in treating the date of such dismissal as the commencement of hostile possession. Learned counsel submitted that proceedings for correction of *Khasra Girdawari* pertain solely to rectification of entries reflecting actual possession and are founded on revenue record accuracy rather than adjudication of title or the nature of possession. The dismissal of such an application only signifies that the revenue authority did not find sufficient basis for alteration of the existing entry; it does not, in any manner, confer legitimacy upon the possession of



the opposite party nor does it operate as the starting point of adverse or hostile title.

9.2. Moreover, it was emphasized that any purported admission attributed to the plaintiff's father, as allegedly recorded by the revenue authority in the said order, could not, in law, be relied upon to the detriment of the plaintiff unless such alleged admission was duly proved in accordance with law and confronted to the plaintiff during the course of evidence. In the absence of such proof, the learned First Appellate Court's reliance on the said revenue order was legally misconceived and wholly unjustified.

10. Conversely, learned counsel appearing for the respondent submitted that the judgment and decree passed by the learned First Appellate Court suffer from no illegality, perversity, or infirmity warranting interference in second appeal. It was argued that the learned First Appellate Court has rightly appreciated the evidence on record and correctly concluded that the respondent-defendant had perfected his title over the suit property by remaining in open, continuous, and hostile possession for the requisite statutory period.

10.1. Counsel further contended that the findings recorded by the learned First Appellate Court are based on proper appreciation of the pleadings, evidence, and revenue entries, and therefore merit complete affirmation. On this premise, it was urged that the present appeal is devoid of merit and deserves to be dismissed outright.

11. The learned First Appellate Court observed that the respondent-defendant had not produced in evidence the order dated 08.03.1965 passed by the Assistant Collector on the application filed by the plaintiff's father.



During the course of arguments, the respondent-defendant requested that a copy of the said order be made available for the proper and complete adjudication of the appeal, whereupon a copy was duly supplied. The learned First Appellate Court thereafter proceeded to record the relevant portion of the said order in paragraph No. 8 of its judgment, which reads as under:-

"The learned counsel for the appellant did not tender into evidence the Order dated 8.3.1965 passed by the Assistant Collector on the application of Farkash father of Ishwar plaintiff now respondent. The undersigned demanded copy of the same for facility of the decision of this case which was supplied. The operative portion of this order of Assistant Collector (Naib Tahsildar) reads that the respondent Sita Ram was admitted by Farkash in possession since Kharif 1963. This was also admitted by applicant Parkash that possession of respondent Sita Ram On this it was remarked by Naib is forcible and illegal." Tahsildar that "I am afraid, I cannot go into that question as the possession of respondent Sita Ram is even now i.e. of the respondent." So it was held that correction cannot be allowed and khasra girdawari entries have been rightly recorded in Kharif 1963, in favour of, the respondent."

.....AND/OR.....

"Respondent-Sita Ram was admitted by Parkash in possession since Kharif 1963. this was also admitted b applicant Parkash that possession of respondent Sit Ram is forcible and illegal".

The learned Assistant Collector record as under:-

"I am afraid, I cannot go into that question as the possession of respondent Sita Ram is even now i.e. of the respondent"



11.1. Proceeding on the strength of the aforesaid material, the learned First Appellate Court went on to record a categorical finding that the possession of Sita Ram had purportedly become forcible with effect from Kharif 1963. The relevant observations in this regard stand encapsulated in paragraph No. 9 of the impugned judgment, which reads as under:-

“9. In view of this decision and admission of Parkash father of Ishwer it is fully established that possession of respondent Sita Ram has been coming as forcible since kharif 1963, if not prior to that, and this fact was specifically contended in the written statement. that possession of Sita Ram has been coming from 16.6.63 forcible, hostile, continuous to the knowledge of the plaintiff as well as to his father. Now the question is whether since 16.6.1963 possession of Sita Ram is as of a lessee or forcible and illegal. That has to be read in view of the statement of Sita Ram himself which he made in this court. Sita Ram deposed that he and his younger brother Parkash had agricultural holdings. They divided between them; 21 killas each came in their shares. On this killa he was permitted to cultivate by Parkash but when he demanded possession, he declined and he asserted his forcible possession since 16.6.1963.”

12. In this context, it deserves to be noted that even the Assistant Collector did not place any reliance on the alleged admission attributed to Parkash while deciding the application for correction of the Khasra Girdawari. The revenue authority dismissed the application solely on the ground that he was not competent to effect such correction when Sita Ram was admittedly found to be in possession at that time. Once the authority recorded that Sita Ram continued in possession, the question of making any correction in the Khasra Girdawari simply did not arise. Therefore, the



dismissal of the application cannot, by any legal inference, be construed as the point of commencement of hostile or forcible possession on the part of the respondent-defendant.

12.1. With respect to the alleged admission of Parkash, it is significant that although a reference to such admission appears in the order of the Assistant Collector, the said statement has not been proved on record in accordance with law. No witness was examined to establish that Parkash had, in fact, made any such statement regarding the respondent-defendant being in forcible possession of the disputed land. On the contrary, when Parkash entered the witness-box as PW-1, he categorically denied having made any such admission. In these circumstances, it was incumbent upon the respondent-defendant to prove the alleged admission by leading cogent and legally admissible evidence. In complete absence of such proof, a mere recital in the order of the revenue authority which was itself not relied upon by the said authority for its conclusion cannot constitute a valid basis to hold that the permissive possession of the respondent-defendant had transformed into hostile possession from that point onwards.

12.2. Furthermore, the testimony of Sita Ram, who appeared as DW-1, also fails to disclose any of the essential ingredients required to establish hostile possession. His examination-in-chief reads as under:-

“Stated that I am owner in possession of land in dispute for last 40 years. Plaintiff and respondent had 21 killas and we sow half half of land. The khewat of our 21 killas was separated 30 years ago and since that day, we have been sowing our respective lands separately. The land in dispute was



neither in possession of plaintiff ever, nor plaintiff has concern with said killa."

13. From the above testimony, it is evident that no inference can be drawn to support the respondent-defendant's plea that his possession was hostile, open, or adverse to the knowledge and exclusion of the true owner. The respondent-defendant has failed to establish any of the essential ingredients necessary to perfect title by way of adverse possession. In this regard, reference may be made to the authoritative pronouncement of the Hon'ble Apex Court in ***Karnataka Board of Wakf vs. Government of India and Others, 2004 (2) RCR (Civil) 702***, wherein it has been held as under:-

*"Plaintiff, filing a title suit should be very clear about the origin of title over the property. He must specifically plead it. (See: *S M Karim v. Bibi Sakinal* AIR 1964 SC 1254). In *P Periasami v. P Periathambi* (1995) 6 SCC 523 this Court ruled that - "Whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property." The pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Dealing with *Mohan Lal v. Mirza Abdul Gaffar* (1996) 1 SCC 639 that is similar to the case in hand, this Court held:-*

"As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right there under 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., up to completing the period 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 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."

13.1. Further, it is respectfully submitted that the Hon'ble Supreme Court, in ***M. Radheshyamal vs. V. Sandhya and Another, 2024 (2) RCR (Civil) 351***, has elaborated on the principles governing the acquisition of title by adverse possession. The Hon'ble Court has held as under:-

12. *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 a settled law that by pleading adverse possession, 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. In light of the well-settled principles of law enunciated by the Hon'ble Apex Court, it was incumbent upon the respondent-defendant to



prove that his possession over the suit property was adverse, continuous, and uninterrupted for the statutory period exceeding twelve years. The testimony of the respondent-defendant, as reproduced above, clearly demonstrates that he has nowhere deposed that his possession was hostile, adverse, or with the intention of excluding the appellants/plaintiffs from their rightful ownership.

14.1 In these circumstances, the conclusion arrived at by the learned First Appellate Court that the respondent-defendant had perfected his title over the suit property by way of adverse possession is legally unsustainable and contrary to established law. Accordingly, the appeal filed by the appellants/plaintiffs is hereby **allowed**. The judgment and decree passed by the learned First Appellate Court are set aside, and the well-reasoned judgment and decree of the learned Sub-Judge II Class, Sonepat, are restored. Consequently, the suit of the appellants/plaintiffs stands decreed in accordance with the findings of the Trial Court.

15. Consequent upon the final adjudication of the principal matter, it is hereby recorded that all pending miscellaneous applications, if any, arising out of or connected with the present proceedings, shall stand disposed of by necessary implication. In view of the conclusions reached herein, no separate or independent orders are warranted with respect to such applications, as their determination has become wholly infructuous, academic, and devoid of any practical consequence.

(VIRINDER AGGARWAL)
JUDGE

21.01.2026

Gaurav Sorot

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No