



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

RSA-21-1989 (O&M)

Reserved on :-28.04.2026

Date of Pronouncement:- 07.05.2026

Uploaded on:- 08.05.2026

Ganesh Chand (Since Deceased) Through his LRs

... Appellant(s)

Versus

Kewal Krishan

... Respondent

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Rakesh Kumar, Advocate,
Mr. Inderjeet Singh, Advocate and
Mr. Utkarsh Khatana, Advocate
for the appellant(s).

Mr. Sunny K. Singla, Advocate
for the respondent.

VIRINDER AGGARWAL, J.

1. The present Regular Second Appeal (hereinafter to be referred as 'RSA' for short) is preferred by the appellant-defendant to impugn the judgment and decree dated 28.11.1988 rendered by the learned District Judge, Sangrur. By way of the aforementioned decree, the lower Appellate Court affirmed the findings of the learned Sub-Judge Ist Class, Malerkotla, dated 04.09.1986, whereby the respondent-plaintiff's suit for a mandatory injunction seeking possession or, in the alternative, a decree for possession was settled in favor of the respondent.



1.1. The appellant herein assails the concurrent findings of the learned Courts below, contending that the impugned judgments are legally untenable and suffer from patent illegalities. It is further submitted that the findings are vitiated by material errors of fact and law, warranting the intervention of this Court to prevent a miscarriage of justice.

2. The case set up by the plaintiff is that he is the lawful owner of the suit house, having purchased the same from Kafila Begum through a valid sale transaction. It is averred that the defendant, being the brother of the plaintiff, was permitted to occupy the suit premises merely as a licensee. The said licence was duly terminated by the plaintiff vide legal notice dated 20.01.1983. Despite such termination, the defendant has failed to vacate the premises or deliver vacant possession thereof, and the issuance of the aforesaid notice has not elicited any compliance.

3. Upon due service, the defendant entered appearance and filed a written statement, vehemently contesting the suit. It is pleaded that late Dr. Arjun Dev, father of the parties, was the true and beneficial owner of the suit property, having purchased the same from Kafila Begum, and that the sale deed in favour of the plaintiff is merely ostensible, conferring no enforceable right.

3.1. The defendant has denied his status as a licensee and asserted independent ownership, contending that the property was settled upon him in 1962, pursuant to which he has remained in continuous possession. The impugned sale deed is alleged to be benami in nature.

3.2. In the alternative, the defendant claims title by adverse possession, coupled with a plea of estoppel on account of substantial



improvements effected by him. A claim for reimbursement of ₹30,000/- towards such improvements has also been raised in the event of an adverse decree.

4. The plaintiff filed a replication, reaffirming his ownership claim and asserting that the defendant's possession was permissive. Having considered the pleadings and arguments from both sides, the Court framed the following issues for determination:-

1. Whether the plaintiff is the owner of the house in dispute? OPP.
2. Whether the defendant was in possession of the house in dispute as licensee under the plaintiff, if so, its effect? OPP.
3. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD.
4. Whether the defendant has become owner of the house in dispute by way of adverse possession? OPD.
5. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD.
6. Whether the defendant has made any improvements in the house in dispute, if so, of what value and what is the effect? OPD.
7. Relief.

4.1. In addition to the issues initially framed, the learned Sub Judge Ist Class, Malerkotla, vide order dated 09.12.1985, deemed it appropriate to frame the following additional issues for determination, in order to comprehensively adjudicate the controversies arising between the parties:-



- 6-A. Whether Dr. Arjun Dev was the real owner of the house in dispute and the sale deed dt.6-6-59 is benami in favour of Kewal Krishan plaintiff? If so, its effect?OPD.
- 6-3. Whether Br. Arjun Dev had transferred and given the suit house to defendant as alleged in the written statement? If so, its effect? OPD.
5. Both parties were granted full opportunity to adduce evidence pursuant to the framing of issues. Upon consideration of the entire material on record, the learned trial Court decreed the suit in favour of the respondent/plaintiff with following observations:-

In light of the findings returned on Issues Nos. 1, 2, 4, 5, 6, 6-A and 6-B, the suit instituted by the plaintiff stands decreed with costs. Consequently, a decree for permanent injunction is granted, and the defendant is directed to hand over vacant and peaceful possession of the suit house to the plaintiff, the licence having been validly terminated.

- 5.1. The appeal preferred by the appellant/defendant was dismissed by the First Appellate Court with the following observations:-

The appeal, upon due consideration, is found to be devoid of merit and is accordingly dismissed.

Having regard to the facts and circumstances of the case, the parties are left to bear their own costs.

- 5.2. Being dissatisfied by the concurrent findings, the appellant has approached this Court by way of the present RSA.

6. The appellant has instituted the instant appeal before this Court challenging the concurrent judgments and decrees rendered by the learned Courts below. The appeal, upon being found to merit consideration,



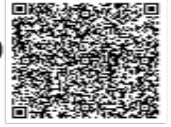
was formally admitted to regular hearing, and notice was duly issued to the respondent, who appeared through counsel and contested the same.

6.1. To enable a thorough, informed, and effective adjudication of the issues arising in the appeal, the complete record of the Courts below was requisitioned and placed before this Court for perusal and consideration.

7. I have heard learned counsel for the parties at considerable length and have bestowed anxious and thoughtful consideration upon their submissions, keeping in view the pleadings of the parties, the evidentiary material brought on record, and the concurrent findings returned by the Courts below.

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 appellant has assailed the findings recorded by the Courts below as being legally unsustainable and vitiated by misappreciation of evidence. It is contended that the Courts have failed to appreciate that the sale consideration for the purchase of the suit



property was, in fact, furnished by late Dr. Arjun Dev, father of the parties, a fact duly corroborated by the testimony of Sunder Lal, who was present at the time of execution of the sale deed and categorically deposed that the consideration amount was paid to him by Dr. Arjun Dev. It is further submitted that both the Courts below have acknowledged that the appellant–defendant effected substantial reconstruction in the suit property, including replacement of roofing, construction of a shop, and installation of a soap manufacturing unit. These acts, it is argued, unmistakably demonstrate open, continuous, and hostile possession in the capacity of an owner since the year 1962. The absence of any objection from the respondent–plaintiff to such acts has been improperly overlooked, and the plea of adverse possession, duly substantiated on record, has been erroneously rejected. It is further contended that undue reliance has been placed upon inconsequential circumstances, such as payment of house tax by the plaintiff and mere custody of the sale deed, as well as the statement of Dr. Arjun Dev (Ex.PX), without proper appreciation of their evidentiary worth.

9.1. Elaborating further, it is contended that the appellant–defendant does not dispute the respondent–plaintiff’s limited right, title, or interest in respect of the shop portion of the property, which had been let out by him; however, the house tax documents placed on record pertain exclusively to the said commercial portion and not to the residential premises in dispute. It is urged that residential properties below 200 square yards, when occupied by the owner, are exempt from house tax, thereby negating the inference drawn by the Courts below regarding payment of



such tax by the plaintiff. It is further submitted that the original sale deed remained in the custody of Dr. Arjun Dev during his lifetime and came into possession of the respondent–plaintiff only after his demise in the year 1980, and, therefore, mere production thereof cannot confer title. The veracity of statement Ex.PX has also been questioned, particularly in light of the categorical deposition of Sunder Lal regarding payment of consideration by Dr. Arjun Dev. It is thus contended that the Courts below have failed to apply the settled legal principles laid down by the Hon’ble Supreme Court in *Thakur Bhim Singh (Dead) by LRs and Another v. Thakur Kan Singh, AIR 1980 SC 727*, and *Om Parkash Sharma @ O.P. Joshi v. Rajendra Prasad Shewda and Others, 2015 (6) ABR 754*, and that the appellant’s plea of adverse possession stands duly established on record, rendering the impugned findings legally untenable.

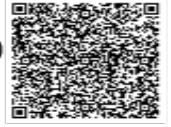
10. Per contra, learned counsel appearing on behalf of the respondent has supported the concurrent findings recorded by the Courts below, contending that the same are based on a proper and judicious appreciation of the pleadings and evidence on record and do not suffer from any illegality or infirmity warranting interference. It is submitted that both the Courts below have rightly concluded that the suit property is owned by the respondent–plaintiff, who has been consistently exercising rights of ownership thereover, as is evident from the municipal records wherein the property stands recorded in his name, coupled with the fact that he has been regularly discharging municipal liabilities, including payment of house tax.



10.1. It is further contended that the plea of adverse possession set up by the appellant–defendant has been rightly rejected, as mere long possession, howsoever extended, does not mature into ownership unless it is established to be open, continuous, and hostile to the knowledge of the true owner. In the present case, the appellant–defendant has failed to demonstrate any such hostile assertion of title, nor has he taken any steps to assert ownership, such as seeking mutation of the property in his own name. On the contrary, the continued reflection of the respondent–plaintiff’s name in official records militates against the claim of adverse possession.

10.2. It is additionally submitted that out of the property purchased under a common sale deed, a portion in the form of a shop remained in the possession of the respondent–plaintiff, who had let it out to a tenant, thereby reinforcing his dominion and control over the property and negating the contention that the entire property had been settled in favour of the appellant–defendant by late Dr. Arjun Dev. It is also urged that the appellant–defendant has failed to establish the existence of any family settlement or arrangement conferring title upon him.

11. With regard to the reliance placed by the appellant on the judgment of the Hon’ble Supreme Court in *Thakur Bhim Singh’s* case (supra), it is submitted that the said decision merely enunciates the guiding principles for determining whether a transaction is *benami* in nature, and, in para No.18 thereof, lays down the relevant parameters for such determination, which are required to be examined in the factual matrix of each case and the same are as under:-



“18. *The principle governing the determination of the question whether a transfer is a benami transaction or not may be summed up thus: (1) the burden of showing that a transfer is a benami transaction lies on the person who asserts that it is such a transaction; (2) if it is proved that the purchase money came from a person other than the person in whose favour the property is transferred, the purchase is prima facie assumed to be for the benefit of the person who supplied the purchase money, unless there is evidence to the contrary; (3) the true character of the transaction is governed by the intention of the person who has contributed the purchase money and (4) the question as to what his intention was has to be decided on the basis of the surrounding circumstances, the relationship of the parties, the motives governing their action in bringing about the transaction and their subsequent conduct, etc.*”

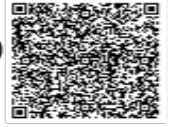
11.1. In ***Om Prakash Sharma @ O.P. Joshi v. Rajendra Prasad Shewda and Others*** (supra), the Hon’ble Supreme Court, while placing reliance upon the earlier authoritative pronouncement in ***Jaydayal Poddar (Deceased) through LRs and Another v. Mst. Bibi Hazra and Others, AIR 1974 SC 171***, has unequivocally held that the burden of establishing a transaction as *benami* squarely rests upon the person asserting the same. Such burden is required to be discharged by adducing cogent and legally admissible evidence of a definite character, either directly establishing the *benami* nature of the transaction or by proving circumstances which, taken cumulatively, lead to an irresistible and reasonable inference in that regard and it was held as under:-

“6. It is well settled that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always



rests on the person asserting it to be so. This burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of benami or establish circumstances unerringly and reasonably raising an inference of that fact. The essence of a benami is the intention of the party or parties concerned; and not unoften, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him; nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. The reason is that a deed is a solemn document prepared and executed after considerable deliberation, and the person expressly shown as the purchaser or transferee in the deed, starts with the initial presumption in his favour that the apparent state of affairs is the real state of affairs. Though the question, whether a particular sale is benami or not, is largely one of fact, and for determining this question, no absolute formulae or acid test, uniformly applicable in all situations, can be laid down; yet in weighing the probabilities and for gathering the relevant indicia, the Courts are usually guided by these circumstances: (1) the source from which the purchase money came; (2) the nature and possession of the property, after the purchase; (3) motive, if any, for giving the transaction a benami colour; (4) the position of the parties and the relationship, it any, between the claimant and the alleged benamidar; (5) the custody of the title-deeds after the sale and (6) the conduct of the parties concerned in dealing with the property after the sale.

The above indicia are not exhaustive and their efficacy varies according to the facts of each case. Nevertheless No. 1 viz. the



source, whence the purchase money came, is by far the most important test for determining whether the sale standing in the name of one person, is in reality for the benefit of another" (Emphasis is ours)"

11.2. Applying the aforesaid settled principles to the facts of the present case, both the Courts below have, upon a meticulous appreciation of the evidence on record, rightly concluded that the sale consideration for the suit property was furnished by Dr. Arjun Dev. At the same time, they have disbelieved the inconsistent and self-contradictory version put forth by the respondent–plaintiff regarding the source of funds, noting material discrepancies between his examination-in-chief and cross-examination.

12. Significantly, reliance has been rightly placed upon the testimony of Dr. Sunder Lal, who was the most material and competent witness on the point, being present at the time of execution of the sale deed and having facilitated the transaction. His categorical deposition that the sale consideration was handed over to him by Dr. Arjun Dev has been duly accepted, leading to the inescapable conclusion that the consideration emanated from Dr. Arjun Dev.

12.1. However, the mere fact that the consideration proceeded from Dr. Arjun Dev does not *ipso facto* render the transaction *benami*. Both the Courts below have correctly proceeded to examine the intention underlying the transaction, which is the determinative test in such cases. It stands admitted that the sale deed was executed in the name of the respondent–plaintiff, Kewal Krishan. The evidence on record, particularly



the statement of Dr. Arjun Dev (Ex.PX) made during his lifetime in earlier litigation, unequivocally affirms that the suit property belonged to the respondent–plaintiff. This admission has been rightly accorded due evidentiary weight.

12.2. Further, the testimony of Dr. Sunder Lal produced as a witness by the appellant–defendant assumes decisive significance, as he has unequivocally deposed that Dr. Arjun Dev had expressly conveyed his intention to purchase the house for Kewal Krishan. Being a natural and independent witness to the transaction, his testimony inspires confidence and has been rightly relied upon by the Courts below.

12.3. In light of the aforesaid evidence, both the Courts have correctly concluded that the transaction in question was not benami in nature, but rather a conscious and deliberate act on the part of Dr. Arjun Dev to purchase the property in the name of the respondent–plaintiff with the clear intention of conferring title upon him. The findings so recorded are thus firmly grounded in law as well as evidence and do not call for interference.

13. The appellant–defendant has manifestly failed to discharge the burden cast upon him to establish that the impugned sale transaction was benami in nature and that the real and beneficial owner of the suit property was Dr. Arjun Dev.

13.1. Both the Courts below have, upon a sound and reasoned appreciation of the evidence, rightly disbelieved the plea of the appellant–defendant that the suit property had been allotted to him pursuant to a



family settlement, there being a complete absence of cogent, credible, and legally admissible evidence to substantiate such assertion. In any event, once it stands concluded that Dr. Arjun Dev was not the owner of the suit property, he could not have validly conveyed or settled the same in favour of the appellant–defendant by way of any alleged family arrangement.

13.2. The plea of adverse possession raised by the appellant–defendant has also been concurrently rejected by the Courts below on sound legal principles. It is an admitted position that the appellant–defendant initially came into possession of the suit property with the permission of his father and as part of a joint family arrangement, and continued to occupy the same even after other family members shifted to a different residence. The fact that the appellant–defendant carried on business from the premises and effected certain repairs or constructions does not, in law, translate into an assertion of ownership adverse to the true owner.

13.3. It is trite that where possession is permissive in its inception, the person in possession must not only assert but also clearly establish the point of time at which such possession became hostile to the knowledge of the true owner. In the absence of any such specific pleading or proof, the claim of adverse possession is rendered wholly untenable. In this regard, reliance has been rightly placed on the judgment of the Hon’ble Supreme Court in *T. Anjanappa and Others v. Somalingappa and Another*, (2006) 7 SCC 570, wherein it has been categorically held that a person claiming adverse possession must establish the exact point of time when his



possession became hostile and the nature of such hostility, which is as under:-

“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:-

"14. 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.

15. Where possession can 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.”

14. It is a well-settled principle of law that mere possession, regardless of its duration, does not *ipso facto* constitute adverse possession against the true owner. To establish a claim of adverse possession, the occupant must demonstrate hostile possession that involves an express or implied repudiation of the owner's title. Such possession must be characterized by the classical requirements of *nec vi, nec clam, nec precario* being adequate in continuity, publicity, and extent to signal a clear defiance of the true owner's rights.

14.1. In the instant case, the appellant-defendant shares a fiduciary relationship with the respondent-plaintiff, being half-brothers. The appellant's occupation originated during their father's lifetime; consequently, his continued residence, subsequent repairs, or minor structural improvements do not, in isolation, manifest a denial of title. The courts below correctly observed that the appellant failed to take any overt steps to assert ownership, such as seeking the mutation of municipal records or issuing a formal notice of claim to the respondent. Accordingly, the appellant has failed to prove the perfection of title by way of adverse possession. Finding no palpable error or merit in the arguments raised, the present appeal is hereby **dismissed**.



15. Consequent upon the final adjudication of the principal matter, all pending miscellaneous application(s), if any, arising out of or connected with the present proceedings, shall stand disposed of by necessary implication. In view of the conclusions recorded here-in-above, no separate or independent orders are required in respect of such applications, the same having been rendered infructuous.

07.052026
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No