

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

RSA-1058-1992

DIDAR SINGH ETC.

....APPELLANT

VERSUS

SUKHDEV SINGH ETC.

...RESPONDENTS

1.	The date when the judgment is reserved	10.03.2026
2.	The date when the judgment is pronounced	26.05.2026
3.	The date when the judgment is uploaded	26.05.2026
4.	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full
5.	The delay, if any of the pronouncement of full judgment and reason thereof.	Not applicable

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Bikramjit Singh Baath, Advocate and
Mr. Ritesh K. Sharma, Advocate for Appellant nos. 2 & 3

Mr. Amandeep Singh Manaise, Advocate
for the respondent No. 1.

SANDEEP MOUDGIL, J

1. The plaintiff-respondent Sukhdev Singh instituted a suit for declaration and consequential relief asserting ownership over the suit land on the basis of registered sale deed dated 30.01.1973 executed by defendant No.4 Pritam Singh. It was pleaded that despite the aforesaid transfer, Pritam Singh subsequently executed another sale deed dated 25.03.1974 in favour of defendants Didar Singh and others qua part of the suit property, though no right or title remained with him after execution of the earlier sale deed. The defendants

contested the suit primarily on the basis of subsequent sale deed dated 25.03.1974 and the revenue entries reflecting their possession over part of the land.

2. The learned trial Court partly decreed the suit vide judgment and decree dated 02.02.1989 by holding that though the plaintiff had acquired title under the prior sale deed dated 30.01.1973, yet qua land measuring 1 kanal 9 marlas, the defendants had remained in possession since 25.03.1974 and the suit instituted on 29.10.1986 was barred by limitation. Consequently, relief was granted only qua land measuring 1 kanal 8 marlas.

3. Aggrieved thereof, the plaintiff preferred an appeal which came to be allowed by the learned lower Appellate Court vide judgment and decree dated 31.01.1992. The lower Appellate Court reversed the findings of the trial Court and decreed the suit in entirety by holding that the defendants had neither specifically pleaded adverse possession nor limitation and that the subsequent sale deed dated 25.03.1974 conveyed no valid title as the vendor had already alienated the property in favour of the plaintiff vide earlier sale deed dated 30.01.1973.

4. Aggrieved against the aforesaid judgment and decree passed by the learned lower Appellate Court, the present Regular Second Appeal has been preferred by defendants Didar Singh and others.

Contentions:

On behalf of appellant-defendant:

5. Learned counsel for the appellants contended that the learned lower Appellate Court gravely erred in reversing the well-reasoned findings recorded by the learned trial Court. It was argued that the defendants had purchased land measuring 1 kanal 9 marlas vide registered sale deed dated 25.03.1974 and had

remained in continuous, open and uninterrupted possession thereof since the date of purchase. Reliance was placed upon jamabandis and khasra girdawari entries produced on record showing possession of the defendants over the disputed land for more than twelve years prior to institution of the suit.

6. It was further contended that even if the plea of adverse possession had not been elaborately pleaded in the written statement, the parties had gone to trial fully aware of the controversy and had led evidence regarding possession and limitation. The lower Appellate Court, therefore, erred in ignoring the plea of limitation merely on technical deficiency of pleadings. It was additionally argued that limitation being a statutory bar under Section 3 of the Limitation Act, the suit deserved dismissal qua land measuring 1 kanal 9 marlas.

On behalf of respondent-plaintiff

7. Per contra, learned counsel for the respondent-plaintiff supported the judgment and decree passed by the learned lower Appellate Court and argued that the plaintiff had acquired valid title over the suit property vide prior registered sale deed dated 30.01.1973 executed by Pritam Singh. It was contended that once the property already stood alienated in favour of the plaintiff, no right, title or interest survived with Pritam Singh to execute subsequent sale deed dated 25.03.1974 in favour of the defendants.

8. It was further submitted that the defendants never pleaded adverse possession or limitation in the original written statement and throughout asserted ownership solely on the basis of Ex.D5. The subsequent attempt to introduce a plea of adverse possession by way of amendment was wholly contradictory and legally untenable, inasmuch as a person claiming ownership under a sale deed

cannot simultaneously claim hostile possession against the true owner from the very same date. It was also argued that mere revenue entries do not confer title nor establish adverse possession in absence of clear pleadings and proof regarding hostile animus. Accordingly, dismissal of the appeal was prayed for.

9. Arguments were heard and the judgement was kept reserved on 10.03.2026.

SUBSTANTIAL QUESTION OF LAW:

Whether the appellants-defendants perfected their title by adverse possession as against the Respondent-plaintiff?

Analysis:

10. The present Regular Second Appeal arises out of a suit instituted by Sukhdev Singh seeking declaration and consequential relief in respect of the suit land on the strength of registered sale deed dated 30.01.1973 executed by Pritam Singh. The plaintiff asserted that after execution of the aforesaid sale deed, title in the suit property stood completely divested from Pritam Singh and consequently the subsequent sale deed dated 25.03.1974 executed by the very same vendor in favour of defendants Didar Singh and others was wholly ineffective and incapable of conferring any right, title or interest.

11. The defendants, on the other hand, sought to defend their possession primarily on the basis of sale deed Ex.D5 dated 25.03.1974 coupled with subsequent revenue entries reflecting their possession over part of the suit land.

12. The learned trial Court, while accepting the prior sale deed dated 30.01.1973 in favour of the plaintiff, nevertheless proceeded to partly dismiss the suit qua land measuring 1 kanal 9 marlas on the reasoning that the defendants had

remained in possession thereof since 25.03.1974 and the suit instituted on 29.10.1986 was beyond limitation prescribed under Article 65 of the Limitation Act. Reliance was placed upon jamabandis Ex.D1 and Ex.D2 and khasra girdawaries Ex.D3 and Ex.D4 showing possession of the defendants. The trial Court thus concluded that although the plaintiff had better title initially, yet the defendants had perfected title by adverse possession on account of continuous possession for more than twelve years. Consequently, relief was granted to the plaintiff only qua Rect. No.29 Killa No.2/2/1 measuring 1 kanal 8 marlas.

13. The lower Appellate Court reversed the aforesaid findings and decreed the suit in entirety. The first Appellate Court noticed that the defendants had never pleaded adverse possession in the written statement nor had they raised any plea that the suit was barred by limitation. It was further observed that the defendants were throughout asserting ownership on the basis of sale deed dated 25.03.1974 and thus their possession was admittedly founded upon a derivative title flowing from the vendor. Once it stood established that Pritam Singh had already alienated the property vide prior sale deed dated 30.01.1973, he was left with no subsisting title which could subsequently pass under Ex.D5.

14. The lower Appellate Court therefore rightly concluded that the subsequent sale deed was ineffective against the rights already created in favour of the plaintiff.

15. The principal argument sought to be raised in the present RSA is that the lower Appellate Court erred in ignoring the plea of adverse possession merely for want of specific pleadings despite evidence regarding long possession having

been led by the parties. This contention, though attractive at first blush, cannot ultimately advance the case of the appellants.

16. This court is well aware of the fact that pleadings are not to be construed pedantically and where parties go to trial fully conscious of the controversy and lead evidence thereon, absence of precise pleadings may not always be fatal. However, the present case does not fail merely on account of defective pleadings. The real difficulty confronting the appellants lies much deeper, namely in the very nature and character of their possession. Throughout the proceedings, the defendants asserted lawful ownership under registered sale deed Ex.D5 dated 25.03.1974. Simultaneously, by way of amendment sought during pendency of the second appeal, they attempted to introduce a plea that they had also become owners by adverse possession from the very same date i.e. 25.03.1974. This court is of the view that these two stands are fundamentally inconsistent.

17. It is a settled legal position that a person entering possession under a sale deed enters asserting lawful title derived from the vendor. Such possession is juridical possession under colour of title and not hostile possession against the true owner. Adverse possession, on the contrary, postulates hostile *animus* and clear repudiation of the true owner's title. The doctrine rests upon possession which is *nec vi, nec clam, nec precario*, which is peaceful, open and hostile possession to the knowledge of the true owner.

18. Therefore, the plea of adverse possession sought to be projected by the appellants also appears to be wholly perfunctory and bereft of the foundational ingredients required in law. Except for a bald assertion that the defendants had

become owners by adverse possession since 25.03.1974, neither the written statement nor the proposed amendment discloses the essential particulars constituting hostile possession. There is no pleading as to when and in what manner the possession of the defendants became adverse to the true owner, whether such hostile assertion was ever communicated to the plaintiff, or what overt acts were performed showing unequivocal denial of the plaintiff's title. The doctrine of adverse possession, being one which defeats lawful title, must be strictly pleaded and strictly proved.

19. As authoritatively held by the Apex Court in “***P.T. Munichikkanna Reddy v. Revamma (2007) 6 SCC 59***”, the Supreme Court underscored that the doctrine is founded not on duration alone, but on the quality, character, and intention of possession. Relevant extract is as under:

18. Thus, there must be intention to dispossess. And it needs to be open and hostile enough to bring the same to the knowledge and plaintiff has an opportunity to object. After all adverse possession right is not a substantive right but a result of the waiving (willful) or omission (negligent or otherwise) of right to defend or care for the integrity of property on the part of the paper owner of the land. Adverse possession statutes, like other statutes of limitation, rest on a public policy that do not promote litigation and aims at the repose of conditions that the parties have suffered to remain unquestioned long enough to indicate their acquiescence.

19. While dealing with the aspect of intention in the Adverse possession law, it is important to understand its nuances from varied angles.

20. Intention implies knowledge on the part of adverse possessor. The case of Saroop Singh v. Banto and Others, 2005(4) RCR (Civil) 599 (SC) : 2005(4) RCR (Civil) 599 (SC) : [(2005)8 SCC 330] in that context held :

"29. In terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendants possession becomes adverse. (See Vasantiben Prahladi Nayak v. Somnath Muljibhai Nayak)

30. Animus possidendi is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not have the requisite animus. (See Mohd. Mohd. Ali v. Jagadish Kalita, SCC para 21.)"

20. It is also worth noting that the Apex Court had considered the question raised by the present Regular Second Appeal, in similar circumstances in ***"Papaiah v. State of Karnataka 1996 INSC 941"***, wherein the title derived was held to be invalid, but the Court had gone into the question of adverse possession as against the purchaser. It was held that unless the purchaser derives valid title, the question of title does not arise and if he remained to be in possession in his own right dehors the title, necessarily he has to plead and prove the date from which he disclaimed his title and asserted possessory title as against the real owner and perfected his possession to the knowledge of the real owner.

21. Therefore, the burden, it must be emphasised, is a heavy one, resting squarely upon the person who seeks to defeat a lawful title and such burden cannot be discharged by vague assertions or generalised claims of long use, but only by clear, cogent, and convincing evidence. The person asserting adverse possession must clearly plead:

- (i) on what date possession became adverse,
- (ii) what was the nature of possession,

- (iii) whether the factum of hostility was known to the true owner, and
- (iv) how long such hostile possession continued uninterrupted.

22. Tested on these principles, the defence raised by the appellants' collapses. No foundation exists in the original written statement regarding hostile possession. Even in the proposed amendment, the defendants merely state that they became owners by adverse possession from the same date on which they purchased the property. There is not even a whisper regarding the precise point of time when possession ceased to remain derivative and became adverse in law. Mere long possession reflected in jamabandi or khasra girdawari entries cannot, by itself, ripen into adverse title.

23. The reliance placed by the trial Court upon revenue entries was also legally insufficient. Revenue records may at best establish possession for fiscal purposes but they do not conclusively establish title nor hostile animus. The lower Appellate Court was therefore justified in holding that such entries could not override the earlier registered conveyance executed in favour of the plaintiff. Once the plaintiff's sale deed dated 30.01.1973 stood proved, the burden heavily shifted upon the defendants to establish the stringent ingredients of adverse possession but from the material on record, it can be inferred that burden remained wholly undischarged.

24. The amendment application moved by the appellants also does not inspire confidence. The same was filed only after the lower Appellate Court noticed absence of pleadings regarding adverse possession. The proposed amendment does not merely clarify an existing plea but seeks to introduce an

entirely new legal foundation inconsistent with the original stand. On one hand the appellants claim to be bona fide purchasers for consideration acting in good faith, on the other they claim hostile possession adverse to the plaintiff from the very inception. The two states of mind cannot ordinarily co-exist simultaneously. A bona fide purchaser acknowledges lawful derivation of title; an adverse possessor repudiates the title of another. The contradiction is not merely technical but goes to the root of the defence itself.

25. The appellants also sought to invoke Section 3 of the Limitation Act by contending that limitation must be considered even absent pleadings. There can indeed be no quarrel with the proposition that a suit instituted beyond limitation is liable to dismissal even if limitation is not pleaded. However, Article 65 of the Limitation Act, itself predicates commencement of limitation from the point when possession becomes adverse to the plaintiff. Thus, unless adverse possession is first established in law, limitation cannot begin to run. In the present case, the defendants failed to establish when their possession became hostile to the knowledge of the plaintiff. Consequently, the very foundation for invoking Article 65 of the Limitation Act remained absent.

Conclusion

26. The findings recorded by the lower Appellate Court are thus neither perverse nor contrary to evidence. Rather, they represent a correct application of settled principles governing adverse possession and burden of proof. The first Appellate Court, being the final Court on facts, thoroughly re-appreciated the evidence and rightly concluded that the defendants could not derive any lawful

benefit either from Ex.D5 or from the vague and unsubstantiated plea of adverse possession.

27. Consequently, the substantial question of law framed by this Court is answered against the appellants-defendants.

28. Thus, this court is of the considered opinion that the judgment and decree passed by the learned lower Appellate Court do not suffer from any illegality or perversity requiring interference by this Court and no substantial error of law warranting interference under Section 100 CPC is made out.

29. The present Regular Second Appeal is hereby dismissed.

30. Pending applications stand disposed of.

26.05.2026

Meenu

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*