



RSA-1746-1993 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-1746-1993 (O&M)
Reserved on: 25.08.2025
Pronounced on: 29.08.2025

Shiv Charan Appellant

VERSUS

Manohar Singh Respondent

CORAM: HON'BLE MS. JUSTICE MANDEEP PANNU

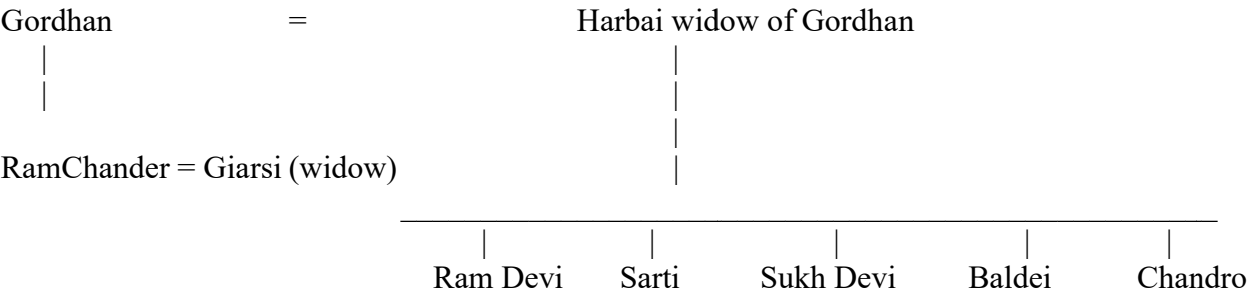
Present: Mr. Sanjay Mittal, Advocate for the appellant.

Mr. Surinder Garg, Advocate and
Mr. Lalit Chander Sharma, Advocate for the respondent.

MANDEEP PANNU, J

1. The present Regular Second Appeal has been filed by the appellant/plaintiff, Shiv Charan, assailing the judgment and decree dated 17.02.1988 passed by the learned trial Court, as well as the judgment and decree dated 20.07.1993 passed by the learned First Appellate Court, whereby the suit instituted by the plaintiff for grant of decree of perpetual injunction restraining the defendants from interfering in his alleged possession over the land measuring 81 Kanals 16 Marlas was dismissed. The concurrent findings of both Courts below are under challenge in the present appeal.

2. The following pedigree is not in dispute and is necessary to appreciate the controversy:



**Facts of the Case**

3. The brief facts emerging from the pleadings are that plaintiff-Shiv Charan instituted a suit against the defendants, including Manohar Singh, seeking a decree of permanent injunction restraining them from interfering in his alleged possession over the land in dispute i.e. land measuring 81 Kanals 16 marlas situated in village Ghatal Maniawas, Tehsil Rewari. The plaintiff asserted that he had been cultivating the land in question as *Gair Marusi* since the year 1961, and had even installed a tubewell at his own cost for irrigation purposes. It was further claimed that he had been cultivating wheat and vegetables on the disputed land and had reaped crops during Rabi and Kharif seasons of 1982. The plaintiff further contended that by virtue of his long, open, and hostile possession for more than 12 years, to the knowledge of the true owners, he had perfected his title to the suit land by way of adverse possession.

4. It was also pleaded that original owner Smt. Giarsi, widow of Ram Chander son of Govardhan, had contracted a Karewa marriage in 1960 with one Malia, thereby forfeiting her rights in the estate of her deceased husband Ram Chander. According to the plaintiff, Smt. Giarsi thereafter begot children from her new alliance, and never cultivated the land in question. Thus, she had no subsisting right in the property left behind by her deceased husband-Ram Chander. The plaintiff alleged that the defendants, having no right, title, or interest, were bent upon forcibly dispossessing him from the disputed land.

5. The defendants contested the suit. They took one of the preliminary objection that the suit is bad of non-joinder of necessary parties. They categorically denied the possession of the plaintiff as *Gair Marusi* or as owner by way of adverse possession. They further denied the plea of forfeiture of rights by Smt. Giarsi on account of her Karewa marriage, and asserted that she remained owner to

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the extent of half share of the land inherited from her husband, as per the provisions of the Hindu Succession Act, 1956. It was further pleaded that the answering defendants had purchased the half share of Smt. Giasi through registered sale deed dated 15.06.1982 and mutation was duly sanctioned in their names on 21.06.1982. Thus, the defendants claimed themselves to be bona fide purchasers for valuable consideration, in lawful possession of the property.

6. Replication was filed by the plaintiff denying the stand of the defendants, and reiterating the averments of the plaint.

7. On the basis of pleadings, the following issues were framed:

1. Whether the plaintiff is owner in possession of the property in dispute as *Gair Marusi* as alleged? OPP

1-A. Whether the plaintiff has become owner of the suit land by way of adverse possession? OPP

2. Whether the suit is bad for non-joinder of necessary parties? OPD

3. Whether the plaintiff is estopped by his act and conduct from filing the present suit? OPD

4. Whether this Court is having no jurisdiction to entertain the present suit? OPD

5. Relief.

8. Both the parties have led their respective evidence.

Findings of the Trial Court

9. Learned trial Court observed in the impugned judgment and decree dated 17.02.1988, that during trial, the learned counsel for the plaintiff made a statement giving up Issue No.1-A, and specifically stated that the plaintiff did not claim ownership by way of adverse possession. In view of this concession, the trial

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Court recorded a finding that the plaintiff cannot be declared owner of the suit property on the plea of adverse possession.

10. As regards possession, the trial Court considered revenue records i.e Jamabandi entries 'Ex.PC' for the year 1962–63, 'Ex.PD' for the year 1967–68, 'Ex.PE' for the year 1972–73, 'Ex.PA' for the year 1977–78 and observed that Smt. Harbai, mother of Ram Chander, and Smt. Garsi, widow of Ram Chander, were recorded as co-owners in equal shares in the suit property measuring 81 kanals 16 Marlas, while Shiv Charan was shown in possession being a relative of the owners. The Court further noted that the plaintiff himself admitted to cultivating the land sometimes as owner, sometimes as relative of the owner, and sometimes as *Gair Marusi*, thereby taking inconsistent stands.

11. The trial Court held that performance of Karewa marriage by Smt. Garsi did not divest her of ownership rights under the Hindu Succession Act, 1956, and she continued to remain absolute owner of her half share. It was also proved on record that the defendants purchased her share through registered sale deed dated 15.06.1982 and were thus owners in possession of that half share. Consequently, the trial Court held that the plaintiff had no legal right to seek injunction against the true owners, and dismissed the suit.

Findings of the First Appellate Court

12. The First Appellate Court reappraised the evidence and concurred with the findings of the trial Court. It was held that the plaintiff had failed to establish the nature of his possession, as he vacillated between the stand of being owner, relative of owner, or tenant at will. The revenue entries did not support his claim of independent possession as *Gair Marusi*. The Court further held that once the defendants had purchased the share of Smt. Garsi, they stepped into her shoes as co-owners, and the plaintiff could not resist their lawful possession. The Court

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further held that a person who is holding a certain property on behalf of the owners is not so entitled to any relief of permanent injunction because when a person holds property on behalf of some persons, he is in no better position than a licensee and a licensee is not entitled to the relief of permanent injunction. Thus, the appeal was dismissed.

13. Feeling aggrieved by the judgments and decrees of the Courts below, the present appeal has been preferred by the appellant/plaintiff – Shiv Charan.

Submissions of the Appellant

14. Learned counsel for the appellant/plaintiff contended that both the Courts below erred in law in dismissing the suit. It was urged that the plaintiff had been in long settled possession over the disputed land, cultivating the same for more than two decades. Reliance was placed on the decision of the Hon'ble Supreme Court in *Rame Gowda (D) by LRs. v. M. Varadappa Naidu (D) by LRs. (2004) 1 RCR (Civil) 519*, wherein it was held that even a trespasser in peaceful and settled possession of a property is entitled to protection of law, such a possessor cannot be dispossessed by the owner without due process of law and injunction can thereby be granted to protect such possession. It was submitted that the plaintiff was in settled possession, and therefore his possession could not be disturbed except in accordance with law. Learned counsel for the appellant/plaintiff has further submitted that the Courts below have erred in holding that the appellant/plaintiff could not get permanent injunction against the true owner, as the appellant/plaintiff stands proved to be *Gair Marousi* even after the partition.

Submissions of the Respondents

15. *Per contra*, learned counsel for the respondents submitted that the plaintiff had utterly failed to establish any consistent or lawful possession. The revenue entries showed him merely as a relative of the owners. The plea of adverse

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possession was expressly abandoned before the trial Court. Further, once the defendants had purchased the share of Smt. Giarsi, they acquired ownership and possession lawfully. A trespasser cannot seek injunction against the true owners. It was argued that the principle laid down in *Rame Gowda's case (supra)* applies only where possession is settled, peaceful, and not permissive, whereas in the present case, the plaintiff admitted possession under different capacities. Hence, his possession was not protected.

Findings

16. Having heard learned counsel for the parties and perused the record, this Court is of the considered opinion that the concurrent findings recorded by the Courts below suffer from illegality and are based on a wrong proposition of law.

17. No doubt, the plaintiff initially took the plea of adverse possession in the plaint but the same was expressly given up by him before the trial Court. Therefore, the question of ownership by way of adverse possession does not arise. What is to be seen in the present case, being a suit for permanent injunction, is not the title but the question of possession of the plaintiff over the suit property.

18. The contention that Smt. Giarsi lost her rights after contracting Karewa marriage is untenable. This legal position has been settled by the Hon'ble Supreme Court in *Eramma v. Veerupana, AIR 1966 SC 1879*, and consistently followed thereafter that after the enactment of the Hindu Succession Act, 1956, the widow inherits the property of her deceased husband as absolute owner, and her remarriage does not divest her of such rights. Findings of both the Courts below to this extent are legal and upheld.

19. It is relevant to mention that the suit was filed in respect of the total land measuring 81 Kanals 16 Marlas. The revenue record reveals that Smt. Giarsi and Smt. Harbai were recorded as co-owners in equal shares. Thus, the defendants



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who claim purchase from Smt. Giarsi vide registered sale deed dated 15.06.1982 acquired only half share, i.e. 40 Kanals 18 Marlas. The dispute with the present respondent in essence revolves around this half share which originally belonged to Smt. Giarsi. The land covered by the said sale deed comprises Khasra Nos. 15 (8-0), 16 (8-0), 17/2 (4-0), 24 (8-0), 25 (8-0), 5 (8-0), 6 (8-0), 1 (7-4), 10 (6-12), 20 (8-0), 16 (8-0).

20. Except for stray entry in partition proceedings of suit land to the effect that defendants are owners in possession of share of their land, there is no other evidence to show that defendants ever come in possession of $\frac{1}{2}$ share of land purchased from Smt. Giarsi and got partitioned thereafter. Assuming suit land was partitioned and $\frac{1}{2}$ share of Smt. Giarsi came to the defendants, this proves only the fact that they stepped into the shoes of Smt. Giarsi. However, Smt. Giarsi, herself, never remained in possession of $\frac{1}{2}$ share of suit land at the time, she was owner of the same and as per jamabadies it was plaintiff-Shiv Charan who is shown to be in possession of $\frac{1}{2}$ share of Smt. Giarsi as “*Gair Marusi*”.

21. The relevant revenue entries i.e. Jamabandi for the year 1962-63 (Ex.PC) onwards up to the latest Khasra Girdawari for the year 1983-84 (Ex.PK), consistently record the possession of the plaintiff Shiv Charan as “*Gair Marusi*” over the half share of Smt. Giarsi. This continuous recording of possession for more than two decades demonstrates that the plaintiff is in settled possession of the suit property. His possession was never disturbed either by the original owner, Smt. Giarsi, or thereafter by the defendants who purchased her share.

22. The Hon’ble Supreme Court in ***Rame Gowda (D) by LRs. v. M. Varadappa Naidu (D) by LRs. (2004) 1 RCR (Civil) 519*** has held that even a trespasser in settled possession cannot be dispossessed by the true owner by use of force and is entitled to protection of law until dispossession is effected in

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accordance with law. Similarly, in *Walter Louis Franklin (Dead) through LRs v. George Singh (Dead) through LRs 1997 (2) RCR (Civil) 41*, it was held that possession itself is protected in law and a person in settled possession is entitled to injunction even against the true owner, who must seek recovery of possession through due process.

23. Applying these principles to the present case, this Court is of the view that the plaintiff has successfully proved through revenue record his settled possession as “*Gair Marusi*” in respect of the half share of Smt. Giarsi. Being held so, he is entitled to protect his possession against true owner also. The contrary findings of the trial Court and first appellate Court, holding him merely in possession as a relative of the owner or treating him as a licensee on stray lines in cross-examination of plaintiff, are contrary to the documentary evidence on record. Revenue entries, which are the best evidence of possession, prevail over inconsistent oral statements. Both Courts below erred in ignoring this vital evidence and in drawing adverse conclusions.

24. Accordingly, the findings of the trial Court and the first appellate Court to the contrary are set aside. The plaintiff is held entitled to a decree of permanent injunction restraining the defendants from interfering with his settled possession in respect of half share measuring 40 Kanals 18 Marlas, being the share of Smt. Giarsi purchased by the defendants, except in due course of law.

25. As regards the other half share belonging to Smt. Harbai, perusal of revenue record reveals that after her death, the property was inherited by her sons and daughters, namely Ram Devi, Sarti, Sukhdevi, Baldei and Chandro, who are not parties to the present proceedings. Since the respondents/defendants have no concern with it, the suit against them in respect of the share of Smt. Harbai is not maintainable and is bad for non-joinder of necessary parties i.e. LRs of Harbai.

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Accordingly, the suit of the plaintiff to that extent stands dismissed having no cause of action against respondents and being bad for non-joinder of necessary parties.

Conclusion

26. In view of the foregoing discussion, the present Regular Second Appeal is allowed in part. The impugned judgments and decrees dated 17.02.1988 and 20.07.1993 of the Courts below are hereby set aside. The plaintiff-appellant Shiv Charan is declared entitled to a decree of permanent injunction restraining the defendants from interfering in his possession over the half share of land originally owned by Smt. Giarsi, measuring 40 Kanals 18 Marlas except in due course of land. The remaining claim of the appellant/plaintiff-Shiv Charan with respect to other ½ share of Smt. Harbai stands dismissed in view of the reasons given above.

27. Pending application(s), if any, also stand disposed off.

August 29, 2025

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(MANDEEP PANNU)
JUDGE

Whether speaking/non-speaking : Speaking

Whether reportable : Yes/No