



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

RSA No.278 of 2005 (O&M)

Kishan Chand Vij

.... Appellant

Versus

Satish Kumar Marwaha etc.

.... Respondents

Reserved on: 14.11.2025

Pronounced on: 12.02.2026

Judgment uploaded on: 27.02.2026

*Whether only the operative part of the judgment is
pronounced or whether the full judgment is pronounced:
Full Judgment*

CORAM : HON'BLE MR. JUSTICE ROHIT KAPOOR

* * * *

Present : Mr. Ashok Singla, Advocate;
Mr. Ankush Singla, Advocate &
Mr. Akash Singla, Advocate for the appellant.

Mr. Rajesh Garg, Sr. Advocate with
Ms. Neha Matharoo, Advocate &
Mr. Mandeep Singh, Advocate for the respondents.

* * * *

ROHIT KAPOOR, J.

CM-1967-C-2025

The instant application has been filed under order 41 Rule 27 of the Code of Civil Procedure, for placing on record statement of Ashok Kumar, Clerk recorded on 13.08.1998 in Civil Suit No.174 of 23.05.1996, along with the translated version, as Annexure A-1/A and A-1.

For the reasons stated in the application the same is allowed and documents Annexures A-1 and A-1/A are taken on record.

Registry is directed to tag the same at appropriate place.

RSA No.278 of 2005

1. The present regular second appeal has been filed by the appellant-defendant (*now deceased and represented through legal representatives*), against judgment and decree dated 22.11.2004 passed by the learned District Judge, Kapurthala, whereby the appeal filed by the respondents-plaintiffs has been allowed and the judgment and decree dated 06.03.2003 passed by the learned Additional Civil Judge (Senior Division), Kapurthala, has been set aside.

2. The parties shall hereinafter be referred to as per their status before the trial court, i.e. the appellant shall be referred as ‘defendant’ and the respondents shall be referred as ‘plaintiffs’.

Factual Background

3. Briefly stated, the claim of the plaintiffs is that they are owners of the suit land measuring about 15 marlas, which was part of the land parcel measuring 3 kanal 4 marlas comprised in khasra numbers 4278 (0k.-9m.), 4282/1 (2k.-13m.), and 4285/1 (0k.-2m.) as described in the headnote of the plaint. This land parcel was taken on lease from the late Maharaja of Kapurthala for the purpose of constructing a motor garage, by one Sh. Jagan Nath Aggarwal during the year Samvat 1983 (*Gregorian Calendar 1926*). Subsequently, the said land is stated to have been transferred in his favour by issuance of a *sanad* by the Maharaja on 4 Fagun, Samvat 1989, (12th March 1932).

4. Sh. Jagan Nath Aggarwal started joint business in partnership with Mathura Das and Kanshi Ram, sons of Lala Bishan Dass, upon the said land as well as other property situated in Kapurthala,



Hoshiarpur and Raiya. The business was divided amongst the partners, including the immovable properties, by executing a registered dissolution deed on 30 Fagun, 1993 i.e. 12.03.1937. The land/property in question fell to the share of Lala Mathra Dass and Kanshi Ram, who became owners in possession of the same. The family of Lala Mathra Dass and Kanshi Ram continued to do business in partnership amongst themselves, along with their brother Muni Lal and on 25.05.1955 the family property was partitioned by executing a registered partition deed. The property in question fell to the share of Hussan Lal, father of the plaintiffs. It is further claimed that some portion of the property was on rent with one Chaudhary Hans Raj.

5. After the death of Sh. Hussan Lal, the plaintiffs claim to be owners of the property in question, in equal share. There is a recital in the partition deed dated 25.05.1955, wherein Chaudhary Hans Raj is stated to be tenant in some portion of the property. A rent note dated 04.06.1955 is stated to have been executed in favour of the father of defendant, i.e. Chaudhary Hans Raj who is stated to have become tenant in the suit property. The possession of the defendant and his predecessor-in-interest over the suit property was stated to be permissive.

6. Petition No.20 of 1985 was filed under Section 13 of the East Punjab Rent Restriction Act, 1949 for the ejectment of the defendant from the premises in dispute. The defendant along with other legal heirs of late Sh. Hans Raj filed a reply/written statement denying the relationship of landlord and tenant on 13.05.1986. The aforementioned petition by some of the plaintiffs was dismissed on 15.06.1988 by the



Rent Controller, Kapurthala, by holding that there was no relationship of tenant and landlord between the parties. The appeal against the order was also dismissed on 25.04.1990. The plaintiffs filed a suit for permanent injunction against the defendant during the pendency of the rent petition, which was withdrawn.

7. The plaintiffs claimed that the possession of the defendant became illegal and unauthorized, and his status was that of a trespasser from 13.05.1986, i.e. the date when he denied the relationship of landlord and tenant. Suit for permanent injunction for restraining the defendant from raising construction/re-construction upon any portion of the property was also filed, which was dismissed as withdrawn.

8. As per the plaintiffs, they requested the defendant to vacate the suit property on numerous occasions and on his refusal to accede to the same, they were constrained to file the suit in question, for possession.

9. On receipt of notice, the defendant filed his written statement and took certain preliminary objections regarding maintainability of the suit on the ground of *res judicata* (since the suit for permanent injunction was withdrawn), limitation, estoppel (on account of dismissal of ejectment petition), non-joinder of necessary parties. On merits, the averments made in the plaint were denied and it was claimed that the suit property is in fact *Abadi Deh* and falls in Khasra No.5700/4282min. The defendant claimed that his father was Agazi Chaudhary (*First Chaudhary*) of Yakka Khana, Kapurthala and *sanad* was issued in his favour and therefore, he was the owner in possession.



The stand of the defendant was that his father had raised construction on the site about 67 years ago and the electric and water connections were in the name of his father who died in the year 1975. It was further stated that 10 years after the partition of the country, the father of the defendant started running a dairy on the site in question and the said dairy was being run on the site by the defendant, till date. It was claimed that the father of the defendant and he himself, have been in peaceful, continuous and uninterrupted possession of the site in question. The right, title and interest of the plaintiffs or their predecessors-in-interest, stood extinguished and the defendant became owner of the suit property, by way of adverse possession, which is hostile and adverse to the plaintiff and has matured into full ownership of the defendant.

10. The plaintiffs filed replication to the written statement filed by the defendant, denying the averments made therein and reiterated the facts stated in the plaint.

Issues

11. From the pleadings of the parties, the following issues were framed:

- 1) *Whether the plaintiffs are entitled to the decree for possession of the suit property? OPP.*
- 2) *Whether the present suit is barred because of dismissal of the earlier suit on 2.4.1987? OPD*
- 3) *Whether the plaintiffs are stopped by their act and conduct from filing this suit? OPD*
- 4) *Whether the suit is bad for non-joinder of necessary parties? OPD*



5) *Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD*

6) *Relief.*

12. After perusal of the pleadings as well as oral and documentary evidence adduced by the parties, the trial court decided issue No.1 against the plaintiffs and in favour of the defendant, while issues No.2 to 5 were decided against the defendants and in favour of the plaintiffs, and the trial court dismissed the suit with costs, vide its judgment and decree dated 06.03.2003.

13. The decision of the learned trial court was assailed by the plaintiffs by filing an appeal, which was allowed by the learned First Appellate Court, vide judgment and decree 22.11.2004 and the decision of the court of first instance was set aside and the suit of the plaintiffs was decreed.

Arguments of the defendant

14. Learned counsel appearing on behalf of the defendant has argued that the learned First Appellate Court has committed an error in setting aside the well-reasoned findings of the trial court, which were based upon a proper appreciation of the pleadings and evidence available on record. It is submitted that the plaintiffs had failed in several rounds of litigation apart from the suit in question and despite failing in every court and without being able to prove ownership, filed the suit in question, which was not maintainable. It is argued that though the nomenclature for the suit was that of a suit for possession, but careful perusal of the

pleadings would show that the same is for declaration. Adverting to the Article 64 of the Limitation Act, it is urged that the said suit could have been filed within 12 years from the date of dispossession or the plaintiffs could have filed a suit under Section 6 of the Specific Relief Act on the basis of previous possession within 06 months from the date of dispossession, and the present suit does not fall in either of the categories, therefore, same is on the basis of title only which was required to be proved and the same could not have been done without impleading the State of Punjab as party, who is recorded as owner in the assessment register of the municipal committee.

15. It is further contended that the plaintiffs have not tendered any evidence to prove their title on the strength of the alleged *sanad* Exhibit P-1, as the said document has not come from any official record or through any official witness or through any executants. Except the sole testimony of the plaintiff, no person or official witness or any one aware of the factum of the *sanad*, has stepped into the witness box to prove the said *sanad*, which is in Urdu language and even the person who allegedly translated the same, has not been examined to certify that the translation is true and correct. Reliance is placed upon the judgment of the Himachal Pradesh High Court in the case of ***Pushpa Devi and others Vs. Amro Devi and others, RSA No.4323 of 2013 decided on 02.12.2016*** and Volume-1, Chapter-1 Part-N of the High Court Rules and Orders.

16. It is further submitted that once Exhibit P-1 itself was not proved, all subsequent documents could not have been taken into consideration and this aspect of the matter has not been considered by the



learned First Appellate Court. It is argued that records reveal that the electricity bills and water bills were exhibited in the file which would show the possession of the defendant over the property in dispute. Learned counsel has drawn the attention of the court to paragraph 14 of the impugned judgment to submit that the learned first appellate court has wrongly recorded the finding that the defendant has made any kind of admission regarding the identity of the suit property in its written statement. It is urged that there is a huge difference between Khasra No.4282/1 and 4282 *min.* as 4282 *min.* is the remaining part of Khasra No.4282, which is left out after the division of 4282/1.

17. On the point of adverse possession, it is argued that once in rent proceedings, the plaintiffs admitted the possession of the defendant's father since 1955 and the relationship of landlord and tenant was disbelieved by the Rent Controller, then the possession of the defendant could not have been stated to be permissive and rather it stood proved that the defendant was owner in possession of the land in question at least from 1955 onwards, and such possession was open, continuous and hostile. It is contended that the defendant would therefore, become owner in possession by way of adverse possession, even if the *sanad* D4/1, D4/2 conferring title upon the defendant's father, were to be ignored.

18. *Per contra*, learned counsel for the plaintiffs has at the very outset referred to the provisions of Section 41 of the Punjab Courts Act, 1918 (*in short*, '*Act of 1918*') to contend that in view of the law laid down by the Constitutional Bench of the Supreme Court in the case of

Pankajakshi (dead) Through LRs and others Vs. Chandrika and others, (2016) 6 SCC 157, Section 97 of Code of Civil Procedure (Amendment Act), 1976, has no application to Section 41 of Act of 1918, which continues as a law in force, being a special and local law. It is submitted that the regular second appeal can only be decided on the limited grounds as specified under Section 41 *ibid* and findings of the lower appellate Court even if the same are erroneous, cannot be interfered with, merely because another view is possible. It is submitted that law is settled that wherever there is a judgment of reversal, as in the present case, the view taken by the lower appellate Court should weigh with the High Court. Reliance has been placed in this regard upon the judgment of the Hon'ble Supreme Court of India in the case of ***Randhir Kaur v. Prithvi Pal Singh, (2019) 17 SCC 71***.

19. Learned senior counsel also places reliance upon a judgment of a Co-ordinate Bench of this court, in the case of ***Tarsem Lal Vs. Nahar Singh and others, 2023: PHHC: 138639***, wherein the principles of law enunciated in various pronouncements of the Hon'ble Supreme Court regarding scope of interference in a Regular Second Appeal under Section 41 of the Act of 1918, were considered.

Analysis and Findings

20. At the outset, in context with the arguments advanced by the rival parties, the law regarding the scope of interference in a Regular Second Appeal, is being briefly outlined. It has been held by the Constitution bench of the Supreme Court in case of ***Pankajakshi*** (supra) that regular second appeal would be governed by Section 41 of the

1918 Act, the same being a special/local law and not by the amended provisions of Section 100 CPC. The provisions of Section 41 of the 1918 Act are *pari-materia* to the unamended Section 100 CPC, and therefore grounds of interference in a second appeal would be limited to the grounds as mentioned therein, i.e. (a) the decision being contrary to law or to some custom or usage having the force of law; (b) the decision having failed to determine some material issue of law or to some custom or usage having the force of law; and (c) a substantial error or defect in the procedure provided by the Code of Civil Procedure, 1908, or by any other law for the time being in force which may possibly have produced error or defect in the decision of the case upon the merits.

21. The effect of the Constitution Bench judgment in ***Pankajakshi*** (supra) was considered by the Supreme Court in the case of ***Randhir Kaur*** (supra), wherein it was *inter alia* observed as under:-

“10. The effect of the Constitution Bench judgment in Pankajakshi is that in second appeal, the scope of interference within the Punjab and Haryana High Court would be the same as the Code of Civil Procedure existed prior to the 1976 Amendment. The provisions of Section 41 of the Punjab Act and of Section 100 CPC are in pari materia.

11. Some of the judgments of this Court dealing with the scope of the old Section 100 are required to be discussed. In a judgment in Deity Pattabhiramaswamy v. S. Hanymayya, while examining the scope of Section 100 CPC, held as under : (AIR p. 59, para 13)

“13. The finding on the title was arrived at by the learned District Judge not on the basis of any document of title but on a consideration of relevant documentary and oral evidence adduced by the parties. The learned Judge,



therefore, in our opinion, clearly exceeded his jurisdiction in setting aside the said finding. The provisions of Section 100 are clear and unambiguous. As early as in 1891, the Judicial Committee in Durga Choudhrai v. Jawahir Singh Choudhri stated thus : (SCC OnLine PC)

‘There is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however gross or inexcusable the error may seem to be.’

The principle laid down in this decision has been followed in innumerable cases by the Privy Council as well as by different High Courts in this country. Again the Judicial Committee in Midnapur Zamindary Co. Ltd. v. Uma Charan Mandal further elucidated the principle by pointing out : (SCC OnLine PC)

‘[If] the question to be decided is one of fact, it does not involve an issue of law merely because documents which were not instruments of title or contracts or statutes or otherwise the direct foundations of rights but were merely historical documents, have to be construed.’

Nor does the fact that the finding of the first appellate court is based upon some documentary evidence make it any the less a finding of fact (see Wali Mohammad v. Mohd. Bakhsh). xxxx”

12. Later, in a judgment, in Kshitish Chandra Bose v. Commr.— three Judges, of this Court held that the High Court has no jurisdiction to entertain second appeal on findings of fact even if it was erroneous. The Court held as follows : (SCC p. 108, para 11)

“11. On a perusal of the first judgment of the High Court we are satisfied that the High Court clearly exceeded its jurisdiction under Section 100 in reversing pure concurrent findings of fact given by the trial court and the then appellate court both on the question of title and that of adverse possession. In Kharbuja Kuer v. Jangbahadur Rai this Court held that the High Court had no jurisdiction to entertain second appeal on findings of fact even if it was erroneous. In this connection, this Court observed as follows : (AIR pp. 1205-06, paras 5 & 7)



‘5. It is settled law that the High Court has no jurisdiction to entertain a second appeal on the ground of erroneous finding of fact. ...

7. ... As the two courts approached the evidence from a correct perspective and gave a concurrent finding of fact, the High Court had no jurisdiction to interfere with the said finding.’

To the same effect is another decision of this Court in V. Ramachandra Ayyar v. Ramalingam Chettiar where the Court observed as follows : (AIR p. 306, para 12)

‘12. ... But the High Court cannot interfere with the conclusions of fact recorded by the lower appellate court, however erroneous the said conclusions may appear to be to the High Court, because, as the Privy Council has observed, however gross or inexcusable the error may seem to be, there is no jurisdiction under Section 100 to correct that error.’”

14. The Division Bench of the Punjab and Haryana High Court in a judgment in Sadhu v. Kishni, 1979 SCC OnLine P&H 141 set aside the judgment of the learned Single Bench in an intra-court appeal in terms of the provisions of law as it existed prior to 1976, and held as under:

“12. The scope of second appeal as envisaged by Section 100 of the Civil Procedure Code and Section 41 of the Punjab Courts Act has been a matter of judicial scrutiny a number of times by this Court as well as by the final court, that is, the Supreme Court of India. The learned counsel for the appellant has actually made a reference in this regard to Deity Pattabhiramaswamy v. S. Hanymayya AIR 1959 SC 57, Madamanchi Ramappa v. Muthaluru Bojjappa, AIR 1963 SC 1633, Bithal Dass Khanna v. Hafiz Abdul Hai, 1969 SC Notes 481] and Afsar Sheikh v. Soleman Bibi, (1976) 2 SCC 142. These pronouncements, in a nutshell, lay down that there

is no jurisdiction to entertain a second appeal on the ground of a erroneous finding of fact, however gross or inexcusable the error may seem to be. Nor does the fact that the finding of the first appellate court is upon some documentary evidence make it any the less a finding of fact. A Judge of the High Court has, therefore, no jurisdiction to interfere in second appeal with the findings of fact given by the first appellate court based upon an appreciation of the relevant evidence. Their Lordships have further observed that the only ground on which such an appeal can be said to be competent is where there is an error in law or procedure and not merely on an error on a question of fact.

14. In view of the above discussion, we are clearly of the view that the learned Single Judge exceeded his jurisdiction in setting aside the findings of the fact on Issue 2. The provisions of Section 100 being clear and unambiguous, there was no scope for interference with those findings. We thus allow the appeal and set aside the judgment of the learned Single Judge and affirm the judgment and decree passed by the District Judge. The parties are, however, left to bear their own costs.”

15. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact.”

22. In a recent judgment in the case of ***Lehna Singh vs. Gurnam Singh, 2024 SCC Online SC 969***, the Hon’ble Supreme Court,



while referring to the scope of interference under Section 41 of the Act of 1918, held that the provisions thereof being *pari materia* with the unamended Section 100 of CPC, the scope of interference in regular second appeal would be on restricted grounds, and the law laid down in the case of **Randhir Kaur** (supra) was reiterated. It was however held that the first appellate Court, while setting aside the judgment and decree of the trial Court, is required to meet the reasoning given by the Court of first instance. The relevant observations made by the Supreme Court in this regard are extracted as under:-

“23. It is settled law that the First Appellate Court, while setting aside the Judgment and decree of the trial court, is required to meet the reasoning given by the trial court in rejecting the Will, which in the present case has not been done by the First Appellate Court.

24. xxx xxx xxx

25. In Jagannath v. Arulappa and H.K.N. Swami v. Irshad Basith (Dead) By Lrs., this Court has opined that it would be wholly improper to allow first appeal without adverting to the specific findings of the trial court and that the First Appellate Court is required to address all the issues and determine the appeal upon assignment of cogent reasons.”

23. Thus, the position of law as stands crystallized is that that the first appellate Court must advert to the specific findings of the trial Court and is required to address all the issues by giving cogent reasons. While at the same time, the High Court in exercise of its jurisdiction under Section 41 of the Act of 1918 is restrained from interfering on findings of fact, however gross or inexcusable the error may seem to be. It cannot embark upon reappreciation of evidence and substitute its own



opinion for that of the first appellate Court only on the ground that another permissible view was possible.

24. Having carefully gone through the judgments of the courts below, the record and after considering the rival contentions, this Court is of the view that the instant Appeal is required to be dismissed for the reasons mentioned hereinafter.

25. Before dwelling upon the rival contentions, it is apposite to advert to the findings of the trial court and the first appellate court.

26. The learned Trial Court non-suited the plaintiffs and decided issue No.1 against them primarily on the following grounds:(i) they failed to connect the property in dispute with the property described in Ex.A/2 the dissolution deed, wherein the Motor Garage was stated to be at Jalandhar; (ii) did not place on record any document pertaining to tenancy of Sukhjit Engineering Works or Colonel Thakur Singh;(iii) failed to place on record any evidence like electricity bill, water bills, municipal tax paid to the Municipal Committee; (iv) failed to establish landlord-tenant relationship before the Rent Controller or the Appellate Authority;(v) have taken inconsistent pleas in the plaint regarding the possession of the defendant being permissive and him being a trespasser;(vi) vide judgment Ex. DW4/22, the suit of the plaintiffs for correction of entry in the assessment register of the Municipal Committee was dismissed; and (vii) by relying upon the *Sanads* Ex.DW4/1 and Ex.DW4/2, it held that the father of the defendant was the First Chaudhary of Yakka Khanna and his possession remained continuous in the suit property which stood established and proved from the electricity



and water charges bills placed on the file as documents Ex. DW4/3 to Ex. DW4/17.

27. Perusal of the judgment of the First Appellate Court would show that it has dealt with all issues raised before the learned trial Court, and while adverting to the findings of the court of first instance, has given detailed reasons for arriving at its own conclusions. As noticed above, law is settled that the High Court cannot intervene in findings on facts, however, the findings of the first appellate court have been tested on the anvil of the grounds available, lest it suffers from any patent error of law, perversity or other serious infirmity. As regards the finding pertaining to failure of the plaintiffs to connect the property in dispute with the property described in Ex.A-2, the first Appellate Court has given detailed reasons that the said finding of the trial court is based upon misappreciation of evidence. It has correctly observed that it was not even the case of the defendant in the written statement that the property in dispute was situated at '*Jalandhar*'. Having perused, Ex. A-2, it is clear that the various properties held by the partners are described at page 1, and the property in question has been defined as a motor house situate at '*Kapurthala*'. The findings of the learned trial Court regarding lack of evidence as regards tenancy of Sukhjit Engineering Works or car garage of Colonel Thakur Singh, are absolutely irrelevant for the purpose of deciding the *lis* between the parties, although there is a clear mention about the same in the registered partnership deed dated 25.05.1955. The First Appellate Court has agreed with the view of the trial Court that in view of the decision of the Rent Controller and Appellate Authority, the

relationship of landlord and tenant was not proved between the plaintiffs and the defendant. However, since the same would not have any bearing on the independent cause brought by the plaintiffs for seeking possession based upon ownership, it has rightly proceeded to decide the issue, on the basis of the documents brought on record. The findings of the trial court regarding inconsistent pleas are also immaterial, as the plaintiffs have pleaded that the possession was always permissive till the time the defendant denied the relationship of landlord-tenant, and thereafter his status became that of a trespasser.

28. The learned trial Court has held the father of the defendant as the owner on the basis of *Sanads* Ex.DW4/1 and Ex.DW4/2, however, the lower Appellate Court correctly returned the finding that even if the said *sanads* were to be held as connected with the property in dispute, in view of the fact that *sanad* Ex.P-1 stood issued in the year 1933, the subsequent *sanads* were of no consequence, as the Maharaja of Kapurthala stood divested of all rights of ownership qua the property in dispute. The water and electricity bills placed on record by the defendant, would also not be determinative of him becoming the owner in possession.

29. Although no issue regarding the defendant being owner by way of adverse possession was framed before the trial court, however this question was decided by the learned First Appellate Court and it has held that in the absence of the defendant having stated anything regarding his possession being open, continuous, uninterrupted and hostile in his testimony, and to the contrary the claim always being based upon the

sanads, such plea could not be accepted. It is well settled law that a person claiming adverse possession has to prove three classic requirements i.e. *nec vi, nec clam, nec precario*, that is the possession is peaceful, open and continuous. The adverse possession must be adequate in continuity, in publicity and extent, to prove that the 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. Perusal of the written statement filed by the defendant would show that no date has been mentioned therein from which such adverse possession could be ascertained.

30. Adverting to the arguments of the learned counsel for the defendant, the first argument that has been raised is regarding maintainability of the suit, which according to the learned counsel was in fact a suit for declaration, on the basis of title, which could not have been proved without impleading the State of Punjab as party, who was allegedly recorded as owner in the Assessment Register of the Municipal Committee. The said argument cannot be countenanced. It is settled law that a suit for possession can be filed without seeking a declaration of title, when the Court finds that there is no serious cloud on the title of the plaintiff to the property (see **Anathula Sudhakar Vs. P. Buchi Reddy, (2008) 4 SCC 594**). It is also well settled that entries in municipal records, cannot be taken as evidence conferring title, and the same only shows the person liable to pay the rates and taxes of the municipality (see **R.V.E.Venkatachala Gounder vs. Arulmigu Viswesaraswami & V.P. Temple and Others (2003) 8 SCC 752**). Even otherwise the defendant is



precluded from raising any such objection, which is beyond its pleadings in the written statement, where there is no such mention of the dismissal of the suit in question, nor any specific objection has been taken in this regard. To the contrary, the defendant in paragraph No.4 of the written statement has inter-alia averred that, *“if the plaintiffs are able to prove any entry in their names in the Municipal Assessment Register, which fact is denied, the said entry carries no weight and value and does not prove the title of the plaintiffs or their father over the property in dispute”*. The findings of the learned trial Court on the issue pertaining to non-joinder of necessary party, are also important, which would show that the defendant had only objected to non-impleadment of other legal heirs of his father Chaudhary Hans Raj and such issue was decided against the defendant. No appeal or cross-objection was filed by the defendant. Records reveal that the dispute in the suit filed by the plaintiff was for correction of the entries in the municipal record, which earlier stood in the name of their father, Shri Hussan Lal, prior to 1993-94. The same would have no bearing on the suit filed by the plaintiffs, basis the documents proving their title.

31. The second argument regarding the plaintiffs’ failure to prove their title on the basis of the sanad Ex. P-1, can also not be accepted, as no such argument was raised before the Courts below. Be that as it may, it is settled law that as per the provisions of Section 90 of the Evidence Act, when a document is proved to be 30 years old and is produced from any custody, which the Courts in particular consider proper, then the Court may presume various facts. It is pertinent to note



that the learned lower Appellate Court has in paragraphs 10 to 12 of its judgment, recorded that during the pendency of the appeal, a dispute arose between the plaintiffs and the defendant regarding the correct translation of the sanad Ex. P-1. Both submitted their own translations and keeping in view the fact that the translated copy of the sanad placed on record by the defendant was in consonance with the translation already on record as Exhibit P-1/A, the court dismissed the application for additional evidence. Once the courts below have taken into consideration the contents of the translated sanad, as relied upon by the defendant himself, the argument regarding admissibility of the document is misconceived.

32. The reliance upon the judgment of the Himachal Pradesh High Court in the case of *Pushpa Devi and others* (supra), would also not come to the aid of the defendant as the same was based upon its own facts. The reference to the language of the Court as mandated under Volume-1, Chapter-1, Part-N of the High Court Rules and Orders, is of no relevance as it only mandates that the language of the Courts subordinate to the High Court shall be Punjabi in Gurmukh script in the Punjabi region. The same does not preclude the reliance upon any document in Urdu language and its translation in Gurmukhi script.

33. The argument regarding variance in khasra No.4282/1 and 4282 min. and wrong finding regarding admission by the defendant in this regard by the first appellate Court, is also without any basis. The learned First Appellate Court has merely recorded the factum of mention of khasra no. 5700/ 4282 min. in the written statement and has thereafter



returned the finding that the said khasra number is part of khasra no. 4281/1. The records would reveal that the area comprising in the khasra numbers mentioned in the plaint matched with the *sanad* Ex.P-1-A and registered dissolution deed and partnership deed and the defendant has also stated that the property is comprised in khasra No.4282, in his testimony. Such finding of fact would not warrant any inference in the instant appeal.

34. Lastly the argument regarding ownership of the defendant on the basis of adverse possession, is also without any substance, for the reasons recorded above.

35. It is well settled that findings of fact can only be disturbed if (i) the Courts below have ignored material evidence or acted on no evidence; (ii) the Courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the Courts have wrongly cast the burden of proof. Testing the arguments of the learned counsel for the appellant, the Court does not find that the findings arrived at by the learned lower Appellate Court are perverse or based upon wrong inferences or erroneous application of law. Before arriving at its conclusions, the lower Appellate Court is found to have meticulously sifted through the evidence and recorded its own findings in the correct perspective. The findings of the First Appellate Court, as discussed hereinabove, cannot be stated to be contrary to settled law or against some custom or usage having the force of law or on any other ground envisaged under Section 41 of the Punjab Courts Act which is *pari materia* to the unamended Section 100 of the Code of Civil Procedure.

Having carefully examined the reasons recorded by the learned First Appellate Court as extracted hereinabove, this Court is of the considered opinion that the same cannot be stated to be perverse or based upon wrong inferences or erroneous application of law.

36. In view thereof, it is evident that impugned judgment and decree does not suffer from infirmity or illegality, and as such, the present appeal fails and is dismissed.

12th February, 2026 <i>‘raj-dinesh’</i>	(ROHIT KAPOOR) JUDGE
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<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>