

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**(1) Regular Second Appeal No.1386 of 1988
Date of Order: 8th January, 2016**

Ram Avtar (since deceased) through his LRs

..Appellant(s)

Versus

Devi Sahai and others

..Respondents

(2) Regular Second Appeal No.1387 of 1988

Ram Avtar (since deceased) through his LRs

..Appellant(s)

Versus

Rambilas and others

..Respondents

(3) Regular Second Appeal No.1388 of 1988

Ram Avtar (since deceased) through his LRs

..Appellant(s)

Versus

Ramji Lal and others

..Respondents

(4) Regular Second Appeal No.1389 of 1988

Ram Avtar (since deceased) through his LRs

..Appellant(s)

Versus

Arjun and others

..Respondents

(5) Regular Second Appeal No.1390 of 1988

Ram Avtar (since deceased) through his LRs

..Appellant(s)

Versus

Missri and others

..Respondents

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA

**Present: Mr. S.S.Dahiya, Advocate,
Mr. Bikram Chaudhary, Advocate
Ms. Sangeeta Gaur, Advocate and
Mr. Lokesh Dahiya, Advocate,
for the appellants.**

**Mr. Ajay Jain, Advocate,
for the respondents.**

RAJIVE BHALLA, J.

Ram Avtar, the appellant, (since deceased), challenges judgment and decree dated 15.12.1987, passed by the Additional District Judge, Narnaul, allowing the appeal filed by the respondents and as a consequence setting aside judgment and decree dated 16.09.1986, passed by the Sub Judge Ist Class, Narnaul, decreeing his suit for possession.

Counsel for the appellant submits that the trial court decreed the suit for possession but the first appellate Court, has reversed the judgment and though it has accepted the ownership of the appellant and his brother with respect to portion EFGH (rented out to Sheo Lal), which was a part of the Haveli, but dismissed the suit by ignoring relevant evidence and recording findings that are contradictory and perverse. The first appellate court has failed to take into consideration that portion EFGH, is a part of the Haveli and was rented out, before and during the 1950's to the respondents predecessors. The first appellate court has also ignored that between the 1950's and the filing of the suit, boundaries have changed

as the respondents raised construction on vacant land without the consent or knowledge of the appellant. The first appellate court also ignored that ancestors of all the respondents were tenants under the appellant and his brother, duly proved by rent notes, which when read with judgment Ex.P-3, dated 24.03.1954, prove that Sheo Lal, was in possession of a part of the Haveli, consisting of a courtyard, a compound and a well. The judgment, Ex.P3 reveals that a suit filed by the appellant for eviction of Sheo Lal, on the grounds of non-payment of rent and personal necessity, was decreed. An execution petition was filed to enforce this decree. The Nazir made a report, Ex.P-8, dated 04.08.1954, recording delivery of possession. The execution petition was disposed of by order dated 16. 09.1986, on the ground that possession has been delivered to the decree holder (the appellant). The first appellate court has discarded this evidence, including the report, dated 04.08.1954, Ex.P8, recording delivery of possession, by relying upon the deposition by Kailash Chand, the Nazir, that possession was not delivered. The first appellate court was bound by the order passed, in execution, and could not discard the order or the report, recording delivery of possession on the basis of oral evidence of the Nazir that possession was not delivered. The report was prepared in the discharge of official duties and, therefore, could not be discarded by reference to oral evidence, even by the person, who authored the report.

Counsel for the appellant further submits that the findings that even if possession was delivered it cannot be held that possession of Sheo Lal's sons is permissive and the finding that the appellant has failed to prove that he ever came into possession of any part of the building are incorrect and contrary to the record. The portion EFGH is admittedly a part of the Haveli, and was let out to Sheo Lal. The eviction order was passed against Sheo Lal, with respect to this very portion, on the grounds

of non-payment of rent and personal necessity. The order was executed in accordance with law and possession was delivered. The boundaries described in the rent notes etc. prove that the Haveli consisted of a constructed portion, a courtyard, a compound and a well. Sheo Lal, his sons and the other respondents encroached upon the property, got sale deeds executed from a fictitious person and raised construction, thereby altering the boundaries. The sale deeds have been rejected by both courts and the respondents, who relied upon these sale deeds, have not filed an appeal. The respondents are unable to adduce any evidence to support any right or title whether possessory or proprietary in the disputed premises. Counsel for the appellant also submits that findings that the appellant has only been able to prove the letting out of portion EFGH and eviction therefrom is based upon a misreading of the evidence. The respondents are legal heirs of Richpal, Sheo Lal and Bakhtawar Singh, who are brothers and son of Dena @ Devi Dayal and the others offspring of Tula Ram or Umda, who were, at one time, the appellant's and his brother Om Parkash's tenants but encroached upon the premises and raised constructions. The impugned findings are, therefore, not only perverse but contrary to the record and may, therefore, be set aside.

Counsel for the appellant further submits that the first appellate court has recorded a finding that the respondents have perfected their title by adverse possession by disregarding a fundamental principle that underlines a plea of adverse possession, namely, admission of the ownership of the true owner, then proof of the date of hostile entry and that the possession was open, hostile and to the knowledge of the true owner. The absence of any such pleadings or evidence and the failure of the respondents to prove their ownership based upon sale deeds, set up in defence or otherwise, should have lead to dismissal of the appeal, but the

first appellate court has accepted the plea of adverse possession reversed the finding of the trial court and dismissed the suit.

Counsel for the respondents, on the other hand, submits that the appellant has not produced any document of title. The rent notes and the eviction order pertain to a portion EFGH. The boundaries depicted in EGFH do not tally with the boundaries depicted in the site plan produced in the suit. The question whether the respondents are in adverse possession or otherwise is entirely irrelevant as onus to prove ownership lies upon the appellant. The appellant has not proved his title by adducing any evidence except for the so called rent notes and the eviction order, which are irrelevant for deciding title. The first appellate Court has rightly held that the appellant has not been able to prove title and the respondents have become owners by adverse possession.

Counsel for the parties have been heard, the impugned judgment, the judgment passed by the trial court and the record have been perused.

Ram Avtar son of Nathu Mal (since deceased), filed Civil Suit No.422, dated 28.02.1977 (Ram Avtar v. Arjun and others), for possession of a dilapidated house, with vacant land, bounded by a compound and land, a well on the East, house of Badri Parsad on the West, road and railway line on the North and a thoroughfare to the South, situated in Sarai Dhusran, Narnaul. The plaintiff/appellant pleaded that the Haveli was given on rent to Richpal, then to Sadhu Ram and his sons etc.. After the demise of Richpal, the rent note executed by Richpal, was endorsed by Sheo Lal. An eviction order dated 24.03.1954, was passed against Sheo Lal. The physical possession of the, property in dispute, was delivered on 04.08.1954/04.05.1954, but as the plaintiff and his brother Om Parkash resided in Gawalior, the Haveli remained vacant and became dilapidated.

The defendants occupied the property 2-3 years before the filing of the suit and some of them have raised construction, without the knowledge or permission of the owner.

Arjun, defendant no.1, filed a written statement denying the ownership of the plaintiff and averred that description of the suit property in the plaint and the site plan, are incorrect. The well and compound referred to in the plaint, fall towards the south of his double storied house shown in red colour in the site plan. The house was never taken on rent by Sheo Lal, who was never dispossessed as averred in the plaint and in case there is any rent note, it is forged. Arjun further pleaded that he purchased the land from Durga Shankar, vide sale deed No.869, dated 18.07.1958, who was owner in possession for the last 50 years. Before constructing the house, in place of an old building, he obtained requisite sanction from Municipal Committee, Narnaul. Arjun also pleaded that the plaintiff has no locus-standi to file the suit and is estopped from bringing the suit. The suit is also barred by limitation, is bad on account of non-joinder or misjoinder of necessary parties and may, therefore, be dismissed.

Devi Sahai, Niranjana Lal and Ram Kumar, defendants no.3, 4 and 5, filed a written statement denying the ownership of the plaintiff and the proforma defendant by pleading that they are in possession of their own house, since the time of their father Sheo Lal, for the last more than 30-35 years, denied the pleadings relating to tenancy and the eviction of Sheo Lal, or that the plaintiff, obtained possession in execution of a warrant of possession. They further pleaded that they have constructed a room. The house other than the first room is not in a dilapidated condition.

Ram Ji Lal and Shiv Lal sons of Umda Ram, defendants no.6 and 7, filed a written statement averring that they are in possession of property, shown in red colour in the site plan and constructed a Baithak,

about 23-24 years ago after sanction from Municipal Committee, Narnaul and pleaded ignorance that the land was rented out to Sheo Lal or that he had been evicted.

Smt. Misri, defendant no.8, filed a separate written statement, claiming that she was in possession of the property for the last more than 40 years and had constructed a house on a portion of the Haweli falling to her share etc.

The plaintiff file replications to the various written statements. The learned trial court after considering the pleadings, framed the following issues, on 17.10.1979:-

- “1. Whether the plaintiff and defendant no.9 are owners of the Haweli (and the open land attached therein, as detailed in para no.1 of the plaintiff?OPP.
2. Whether the defendants no.1 to 5 have allegedly taken possession of the said Haweli and the open space and whether they have illegally raised construction on the open space about 2-3 years back as alleged?OPP.
3. Whether the suit is within time?OPP
4. Whether the plaint has properly been valued for purposes of court fee and jurisdiction?OPP
5. Whether the plaintiff has no locus standi to file the present suit?OPD.
6. Whether the defendants have become owners of the suit property by way of adverse possession?OPD.

7. Whether the suit is bad for non-joinder or necessary parties ?OPD.
8. Whether the suit is not maintainable in the present form?OPD.
9. Relief.”

After considering the pleadings and the evidence adduced, the then Sub-Judge Ist Class, Narnaul, decreed the suit for possession by holding that the plaintiff is owner of the land, in dispute. The Additional District Judge, Narnaul, however, allowed an appeal and remitted the matter for a fresh adjudication.

After remand, an application, under Order 1 Rule 10 of the Code of Civil Procedure, filed by Rambilas, Phool Singh and Jagdish, for being impleaded as defendants, was allowed. Ram Avtar filed Civil Revision No.435 of 1984, to challenge this order. In the meanwhile, Rambilas, Phool Singh and Jagdish filed Suit No.473 of 27.08.1980, claiming ownership of the property, in their possession. The order passed under Order 1 Rule 10 was, therefore, set aside and both suits were ordered to be tried together. The suits were consolidated, written statements and replications were filed and the following issues, were framed in the second suit, on 12.01.1982:-

1. Whether the plaintiffs are owners in possession of the disputed property?OPP
2. Whether the plaintiffs are entitled to the injunction prayed for?OPP
3. Whether the impugned decree dated 12.08.80 is not binding on the plaintiffs?OPP.
4. Whether the plaintiffs are estopped from filing this suit on the grounds alleged?OPD.

5. Relief.”

After parties adduced their evidence, the Sub-Judge 1st Class, Narnaul, once again decreed the suit for possession, by holding that appellant and his brother Om Parkash are owners of the Haweli and the open land attached thereto. The trial court rejected the contention that description of the property is incorrect by relying upon Ex.P3, copy of order dated 20.01.1954 (Ram Avtar v. Sheo Lal), ordering the eviction of Sheo Lal, Ex.P-4, a copy of order dated 05.08.1954, passed in execution proceedings recording that the Nazir has delivered possession and Ex.P-8, a report made by Kailash Chand Nazir regarding delivery of possession.

As regards the claim of ownership, put forth by Rambilas, Phool Singh and Jagdish, respondents and plaintiffs in Civil Suit No.473 of 1980, on the basis of sale deeds, executed by Durga Shankar etc., the trial court rejected the plea by holding that they have not been able to prove the title of their vendor and dismissed their suit.

Aggrieved by this judgment and decree, the unsuccessful defendants and the plaintiffs in the other suit, filed five separate appeals. The appeals were consolidated and vide a common judgment and decree dated 15.12.21987, the Additional District Judge, Narnaul, allowed the appeals, set aside the judgment and decree passed by the trial court, in the suit filed by Ram Avtar and dismissed the suit by holding that Ram Avtar has not been able to prove his and his brother's title. The first appellate Court held that rent note, Ex.P2, ejectment order dated 24.03.1954, Ex.P3, order passed in execution proceedings and the record of execution proceedings, Ex.P-4 and Ex.P-5, do not prove the ownership of Ram Avtar and his brother. As regards the order recording delivery of possession passed in execution of the eviction order the first appellate court relied upon the deposition by Kailash Chand, Nazir, who deposed

that possession was not delivered. The appellate Court also held that, though, the rent note Ex.P-2, provides evidence of ownership regarding a part of the the premises that were rented out but as boundaries in the rent note and the site plan, Ex.P1 do not tally, these documents cannot be relied to declare Ram Avtar and his brother as owners of the entire property or to decree the suit for possession.

As regards the claim of ownership set up by some of the respondents, who had filed a separate suit on the basis of sale deeds, the First Appellate Court affirmed findings recorded by the trial court, rejecting the sale deeds and as a consequence dismissed their appeals. The first appellate court, however, held that all the respondents have perfected their title by adverse possession.

At this stage, it would be appropriate to point out that the respondents have not filed any appeal or cross-objection against concurrent findings of fact recorded by the trial court and the first appellate court declaring their sale deeds null and void.

The controversy in the present case that subsists is whether Ram Avtar has been able to prove that he and his brother are owners of the property in dispute and whether the respondents have been able to prove that they have perfected their title by adverse possession. As is apparent from the narrative of facts, the trial Court and the first appellate court have recorded diametrically opposite findings, on the question of ownership and the plea of adverse possession. The trial court has held that the plaintiff has succeeded in proving ownership and the respondents have failed to prove any right, title or interest in the land, in dispute, much less their title by adverse possession. The first appellate Court, on the other hand, has negated the plea of ownership and held that the respondents have perfected their title by adverse possession.

Counsel for the appellant has framed the following substantial questions of law:-

- (i) Whether the finding of the erstwhile eviction suit, the rent notes and other documents are untenable without being registered?
- (ii) Whether the respondents perfected their title in the suit property by way of perspective title?
- (iii) Whether the respondents proved their title of adverse possession in terms of Section 65 of the Limitation Act?
- (iv) Whether appellant is the owner of the suit property on the basis of existing documents?
- (v) Whether the finding of the erstwhile eviction suit, between the parties are binding and have relevancy of judgment in terms of Section 41, 42, 43, 35 and 77 of Indian Evidence Act?
- (vi) Whether the first appellate court's decision based on the perverse finding?

During arguments, it was agreed by counsel for the parties that the substantial questions of law that require an answer are:-

- (a) whether the first appellate court has misread the evidence on record while holding that the rent note, the eviction order and order passed in execution, recording delivery of possession to Ram Avtar, are insufficient to prove that the remaining land was part of Haveli/house, in dispute?
- (b) Whether the finding that rent note and the eviction orders even if it is accepted, cannot be extended to the entire property as they pertain to portion EFGH and not

to the entire property, indicates a misreading of the evidence on record?

- (c) Whether the finding of the erstwhile eviction suit, between the parties are binding and have relevancy of judgment in terms of Section 41, 42, 43, 35 and 77 of Indian Evidence Act?
- (d) Whether the respondents proved their title of adverse possession in terms of Section 65 of the Limitation Act?
- (e) Whether the first appellate court has erred in holding that the respondents have proved their plea of adverse possession?

The questions framed as questions (a) and (b), relate to the misreading of recitals in rent notes, the eviction order, the order passed in execution, and finding recorded by the first appellate court that the portion EFGH described in the rent notes and in the eviction order is insufficient to infer ownership to the entire property. The third question, namely, question no.(c) is whether findings recorded in the eviction suit are relevant under Sections 41, 42, 43, 35 and 77 of the Indian Evidence Act. The questions being interrelated shall be answered together. The other questions, namely, (d) and (e) pertain to the plea of perfection of title by adverse possession accepted by the first appellate court, but rejected by the trial court.

The appellant claiming ownership of the Haveli, in dispute, filed a suit for possession but without reference to any document of title. A perusal of averments in the plaint and the evidence adduced, reveals that the appellant relies entirely upon rent notes, an order of eviction, a report prepared by the concerned Nazir, recording delivery of possession, to the appellant, an order passed in execution of the eviction order recording

delivery of possession from Sheo Lal (tenant), the description of the property, portion EFGH, in the rent note, which consists of a constructed portion, compound and a well, to the East, various rent notes and oral evidence to press his and his brother's claim of ownership and his prayer for possession. This apart, the appellant relies upon rejection of the sale deeds produced by some of the respondents to assert their ownership, the absence of any proprietary or possessory rights proved by any of the respondents, an entry in the house tax register, relied by the respondents, which records the appellant as owner and an argument that the plea of adverse possession raised by all the respondents proves that the property, an old dilapidated Haveli belongs to the appellant and his brother Om Parkash.

The respondents, on the other hand, deny the ownership of the appellant and his brother, claim adverse possession but some of them claimed ownership on the basis of sale deeds, which have been rejected by the courts below for want of proof of the title of their vendors.

The pleadings and the deposition by the appellant reveal that a part of the Haveli, was rented out to Tula Ram, in Sammat 2001 BK and after his demise to Ladhu Ram, who was evicted, with his sons. The Haveli was then rented out to Richhpal in Sammat 2002 BK. A fresh rent note, Ex.P2, was executed in Sammat 2005 BK. The rent note was proved by PW8 Rameshwar Dayal, an attesting witness of the rent note and once again exhibited as PW8/A. After the death of Richhpal, an endorsement was made on the reverse side of the rent note by Sheo Lal, attorning to the appellant as tenant and undertaking to pay rent. The endorsement made by Sheo Lal, is mark PA, proved by PW6 Raghunandan Lal and exhibited as Ex.'PD'. A certified copy of rent note executed by Tula Ram is Ex.PB. A copy of rent note executed by Umdia son of Rudda is Mark 'PC'. The

appellant also relies upon Ex.P3, a certified copy of judgment dated 24.03.1954, recorded in Suit No.2/EAC, dated 20.01.1954, titled as Ram Avtar (the appellant in the present case) v. Sheo Lal, (the father of some of the respondents) ordering the eviction of Sheo Lal. A relevant extract from the eviction order reads as follows:-

“I have gone through the file. Under Section 13, the tenant is liable to ejectment if he does not pay or tender the arrears of rent and interest with costs of the application on the 1st date of hearing. In this case no arrears have been deposited by the respondent. He is liable to be ejected on this very ground. Vide 1952 PEPSU, 174. Moreover, it is amply proved by the statement of Bishamber Dayal that petitioners require the house for their own use and respondent is spoiling the house. This is another ground for ejectment under Section 13. The case of the plaintiff is amply proved, Therefore, an order for the ejectment of the respondent is hereby passed. The respondent is granted one month's time to put the landlord in possession of the building otherwise he will be liable to ejectment through the process of the Court.”

A perusal of the aforesaid order reveals that Sheo Lal (father of some of the respondents) was ordered to be evicted from the land comprising his tenancy on the grounds of non-payment of rent and the personal necessity of Ram Avtar, the appellant.

A copy of order dated 05.08.1954, passed in execution proceedings, is Ex.P4. A relevant extract from the order reads as follows:-

“The report of the Nazir shows that the decree holder

has been put in possession of the property. Hence no further proceedings are necessary. The case be consigned to the record office in full satisfaction of the decree.”

Ex.P4 records that the Nazir has delivered possession of the property, to the decree holder, i.e. Ram Avtar , the appellant. Ex.P8 is a copy of the report, prepared by Kailash Chand, Nazir, recording the delivery of possession.

A perusal of the rent notes, eviction orders, order passed in execution of the eviction order, the report prepared by the Nazir recording delivery of possession reveals that in all these documents Ram Avtar is referred to as the owner, exercising proprietary control over the property by leasing out the property, receiving rent, evicting tenants, inducting new tenants and even obtaining an order of eviction against one of the tenants, namely, Sheo Lal on the grounds of personal necessity and non-payment of rent. The trial court has held on the basis of this evidence that the evidence proves proprietary control and hence the ownership of appellant. The trial court has also held, while dealing with an objection that boundaries in this order and in the rent notes do not tally, that boundaries in rent notes etc. described in the 1950's could not possibly tally with boundaries depicted in the suit as boundaries have undergo a change, as the respondents, raised construction over vacant part of the property. The trial court has also relied upon the fact that the respondents have not been able to prove their ownership or any right, title or interest, in any part of the property. A relevant extract from the trial court's judgment reads as follows:-

“14. An objection has been raised on behalf of various defendants that in the site plan Ex.P1, well has been

shown almost in the middle of the suit property and since that well and compound have been shown towards East of Haweli of which possession was obtained by the plaintiff from Sheo Lal in execution proceedings, so the plaintiff cannot stretch the suit land right up to extreme east and touching Rasta. I am afraid that this argument has no force in it because only so much description was to be given in the eviction suit against Sheo Lal as was necessary and towards East of that property was open land and well belonging to the plaintiffs. The other parts of Haweli have been on rent with Tula Ram son of Lachhman and Umda son of Kunda who are predecessors-in-interest of some of defendants. Had the plaintiffs been not owners of the suit property. Tula Ram and Umda were not to admit the parts of building to be owned by them and to execute rent notes in their favour or in favour of their father. Shiv Lal defendant no.7 is son of Umda. Plaintiffs No.3 to 5F are successors of Sheo Lal against whom eviction order was obtained by plaintiff and his brother in 1954. DW10 Shiv Lal has admitted that Smt. Basanti daughter of Umda was married to Tula Ram and she had sons Ladhu and Amar Singh. In this way, the plaintiff has succeeded in proving his title in respect of some part of the suit property and since the remaining portion of the property was open land so naturally in that eviction suit the plaintiff was to show a well and compound towards east of the property on rent with Sheo Lal. More over, the

constructions towards East of that well have been pleaded by some of the defendants to have been raised much after 1954. Naturally no construction was to be shown towards East of the well.”

The trial court, thereafter, concluded that the appellant/plaintiff has succeeded in proving his title with respect to a part of the suit property and as the remaining part of the property was leased out to the predecessors or the respondents (described in detail in the above extract) and the other portion was a courtyard, open land and a well, upon which the respondents have raised construction, the plea of ownership cannot be rejected on the ground that boundaries do not tally. The trial court rejected sale deeds produced by some of the respondents to support their plea of ownership and a right to raise constructions and also rejected the defence of title by adverse possession and as a consequence declared the appellant and his brother owners and decreed the suit for possession.

The first appellate Court has, however, reversed these findings by holding as follows:-

“25. Without giving any weightage to that criticism levelled against the sole piece of documentary evidence, relied upon by the plaintiff, because the period of tenancy did not exceed one year and that was not, therefore, compulsorily registrable, the fact remained that the recitals therein could not, by any amount of imagination, prove the title of plaintiff over the entire property in suit. That rent note, Ex.P2, at best provided evidence of ownership respecting the premises let out thereby. It was clearly asserted therein that the site of Haveli let out by the owners was bounded towards the

east by its court yard and well. Concededly, there was only one well in that property, as depicted in site plan, Ex.P1.. The reach and sweep of that rent note could not exceed beyond that well. By no stretch of reasoning, the plaintiff could be held owner of the site located beyond that well. Allowing such a claim of plaintiff would be laying down a hazardous proposition. Things could not be left to the whim and fancy of the plaintiff. The drawing-sketch in plan, Ex.P1, could have been even stretched beyond that upto any length by asserting that portion was also a compound of Haveli. Ram Avtar plaintiff had himself clearly admitted that only portion EFGH, depicted in plan, Ex.P1, was left out in favour of Shiv Lal and that possession during execution proceedings of the eviction order was also taken of that very site i.e. EFGH. Admittedly, the property marked ABCD where existed a double storeyed building was not inter-linked with the portion EFGH having been let out in favour of Shiv Lal and now in occupation of his (Shiv Lal) heirs. That was such a telling circumstance as spoke volumes in support of plea of appellants that the ownership of plaintiff could extend only over portion EFGH which was bounded towards east by Sahan and well and he (plaintiff) could not be allowed to assert any right over the constructed portion beyond that building of Haveli EFGH.”

A perusal of the aforesaid finding reveals that the first appellate court, has while accepting boundaries referred to in the rent

notes, the eviction order and the document recording delivery of possession held that they may indicate ownership but then only with respect to portion EFGH, but cannot be extended to any other part of the property beyond EFGH. The first appellate court also went on to hold that as there was only one well, the appellant's ownership could not extend beyond the well. The first appellate court also held that property marked ABCD, constructed by some of the respondents, is a double storeyed building which is not linked to EFGH and, therefore, the ownership of the appellant “ could extend only over portion EFGH and not beyond this portion” .

The findings so recorded, in my considered opinion, are perverse. The first appellate court not only ignored that boundaries recorded in the rent notes, the order of eviction etc., pertain to a portion EFGH, the property, as it originally existed. The portion EFGH was bounded by open land and a well towards the east. The first appellate court ignored that the respondents do not allege that portion EFGH is not a part of the property. The boundaries referred to in the site plan appended with the suit, Ex.P1, reflect boundaries of the property on the date of filing of the suit and would obviously differ from boundaries existing in the year 1954 or at the time of execution of the rent notes, particularly as the respondents have raised construction on vacant land, to the east of the portion EFGH, a finding that has not been reversed by the first appellate court. The respondents have not adduced any evidence that the portion ABCD, upon which they have raised construction, is a separate plot outside the compound of the Haveli or that it was in existence in 1954 or that it is owned by them. The respondents have in fact produced, Ex.DW9/A, an extract from the house tax register that records Ram Avtar as owner of property No.113. An entry in a house tax register may not be

conclusive evidence of ownership but is “relevant”, as it has been produced by the respondents. The first appellate court not only ignored the rent notes but also lost sight of the fact that the respondents had raised construction in vacant land, lying to the East of the well, described as vacant land, in the rent notes and the eviction suit, without establishing any right or title, except for some of them alleging sale deeds in their favour, which have been rejected by the courts below and others claiming adverse possession. As a result, boundaries described in the rent notes executed in the 1950's or in the eviction suit/order could not possibly tally with boundaries existing on the date of filing of the suit.

The first appellate court committed another significant error by discarding the order, recording delivery of possession, passed during execution of the eviction order, on the basis of the depositions by Kailash Chander, Nazir. The first appellate court lost sight of the fact that a judicial order cannot be rebutted by the deposition of the official who prepared the report. A presumption of truth attaches to a document prepared in the discharge of official duties and once accepted, acted upon and made part of a judicial order cannot be discarded except by an appellate court. The first appellate court was not hearing an appeal from this order or deciding a suit alleging fraud in their execution proceedings and, therefore, had no jurisdiction to sit in judgment over the order passed in execution proceedings. The deposition by Kailash Chander, Nazir, produced as a defence witness should have been summarily rejected as it is contrary to his report. The findings recorded by the first appellate Court that as the boundaries do not tally, the appellant cannot take advantage of the rent note, Ex.P2 to extend the portion EFGH, in my considered opinion, reveal a perverse appreciation of evidence, thereby leading to an error of jurisdiction that must be corrected in the exercise of power in second

appeal.

Consequently, it is held that the appellant has been able to prove ownership of a part of the Haveli and as, admittedly, the Haveli was bounded by a compound, open land and a well which were a part of the Haveli and the respondents have raised construction on the vacant land to the East but have not adduced any evidence to prove that the land on which they have raised construction is separate from the open land of the Haveli or that they have any right, title or interest better than the appellant, it is held that the first appellate court erred in reversing the findings recorded by the trial court on the question of ownership. Apart from these facts, it would be appropriate to point out that the respondents are descendants of or related to one or the other tenants, namely, Sheo La, Richpal, Umda and others and not only claimed sale deeds in their favour but also adverse possession. The questions (a), (b) and (c) are, therefore, answered in favour of the appellant and against the respondents.

The next question that calls for an answer is whether the first appellate court has committed an error of law in accepting the plea of adverse possession raised by the respondents.

Admittedly, sale deeds set up by some of the respondents in opposition to the title of the appellants have been rejected by the courts below for failure to prove the title of their vendor and these respondents have not filed any appeal or cross objection. The other respondents do not assert title but claim that their long uninterrupted possession, for the last 30-40 years, has ripened into ownership by adverse possession. The plea of adverse possession was rejected by the trial court, but the first appellate court has accepted the plea unmindful of the fact that a plea of adverse possession can only be raised against a true owner. A person raising a plea of adverse possession must as the first ingredient, identify the person

whose ownership he seeks to oust. A perusal of the written statement and the evidence adduced by the respondents reveal that the respondents do not admit that the appellant and his brother or any other person are owners. The respondents have not disclosed the identity of the true owner against whom they claim ownership by adverse possession. In fact some of the respondents have set up sale deeds, which as already noticed, have been rejected by the courts below. A plea of adverse possession, as already recorded, must commence with an admission of the title of the true owner and then by cogent evidence proof of the fact that possession was open, hostile and to the knowledge of the true owner, for a continuous period of twelve years. The respondents, as already recorded, empathetically deny the title of the appellant and his brother but have not thought it fit to disclose the identify of the person against whom they claim adverse possession. The plea that they are in long uninterrupted possession, has been raised and accepted by the first appellate court without identifying the true owner, against whom the plea of adverse possession, has been decreed. The respondents have also failed to prove their open and hostile possession to the knowledge of the true owner for a period of 12 years. At this stage, it would be appropriate to point out that howsoever long, the possession, a plea of adverse possession cannot be decreed without proof that the possession was to the knowledge of the true owner. A finding recorded by the first appellate court that as there is no evidence that the appellant ever came into possession even after the eviction order, is irrelevant as the onus to prove perfection of title by adverse possession lay upon the respondents and not upon the appellant. The finding that the appellant was unaware at the time of filing of the suit as to when and over which portion the respondents have raised construction raises an inference of hostile possession to the rights of the

appellant is meaningless in the absence of identity of the true owner or an admission of the ownership of the appellant and his brother. It was for the respondents and not the appellant to prove the identity of the true owner, the approximate date when they entered into open, hostile possession, to the knowledge of an identifiable true owner, who thereafter took no steps to dispossess them for a period of 12 years. The first appellate court committed a serious error of law in failing to discern these serious flaws in the pleadings and the evidence adduced by the respondents and, therefore, wrongly accepted the plea of adverse possession. The finding that the respondents have perfected their title by adverse possession is contrary to the principles that govern a plea of adverse possession and, therefore, must be set aside. Thus, question Nos. (d) and (e) are also answered in favour of the appellant and against the respondents.

Consequently, as questions of law have been answered in favour of the appellants and against the respondents, the appeals are allowed, judgment and decree passed by the Additional District Judge, Narnaul, on the question of ownership of the appellant and his brother and the adverse possession of the respondents are set aside and the judgment and decree passed by the trial court are restored, but with no order as to costs. Decree sheet be drawn up accordingly.

8th January, 2016
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(RAJIVE BHALLA)
JUDGE