

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-680-1988 (O&M)
Reserved On :- 22.08.2023
Date of Decision:-**03.11.2023**

Dayal Singh

... Appellant

Versus

Masso Devi and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by :-

Mr. M.L. Sarin, Senior Advocate with
Mr. Ritesh Aggarwal, Advocate
for the appellant.

Mr. R.S, Manhas, Advocate and
Ms. Saruti Sandal, Advocate
for the respondents.

KARAMJIT SINGH, J.

1. The present appeal has been filed by the plaintiff/appellant against the judgment and decree dated 11.11.1987 passed by the Court of learned Additional District Judge, Gurdaspur, whereby the appeal filed by the respondents/defendants against the judgment and decree dated 30.1.1986 passed by the Court of learned Sub-Judge 1st Class,

Pathankot has been allowed and the suit filed by the plaintiff/appellant was dismissed.

2. The brief facts of the case of the plaintiff/appellant are that plaintiff/Dayal Singh was exclusive owner in possession of the suit land measuring 116 kanals as detailed in the head note of the plaint. The suit land descended to him from his grand-father Moti through his father Kirpu and the defendants/respondents were having no right, title or interest in the same. In the alternative, the appellant/plaintiff claimed his ownership over the suit property on the basis of adverse possession, he being in continuous possession of the suit land for the last more than 12 years and his possession during the said period was open and hostile to the knowledge of the entire world including defendants/respondents. That however in the revenue record defendants/respondents were recorded as owners/co-owners of the suit land and taking undue benefit of the said wrong entries in the revenue record, the defendants/respondents threatened to take forcible possession of the suit land from the plaintiff. Hence the plaintiff filed suit for declaration to the effect that he is the exclusive owner and in cultivating possession of the suit land and that the entries appearing in the revenue record being illegal and factually incorrect are not binding on the plaintiff with consequential relief of permanent injunction to restrain defendants/respondents from interfering into his peaceful possession over the suit land.
3. The suit was contested by defendants No.1 to 6 and 8 and they filed joint written statement, wherein it was pleaded that they are the

owners of the suit land, which is being self-cultivated by defendant No.8 Chattar Singh and prior to that the land in question was cultivated by defendant No.7 Harro as tenant under defendant No.8 Chattar Singh. It was further pleaded that entries in the revenue record are correct. The contesting defendants also took plea that the suit is not maintainable and that the plaintiff is having no right, title or interest in the suit property.

4. Suit against defendant No.7 Harro was dismissed under Order 9 Rule 2 CPC vide order dated 13.2.1985.
5. On the basis of the pleadings of the parties, the following issues were framed by the learned trial Court:-
 - i. Whether the plaintiff is owner in possession of the suit land? OPP
 - ii. Whether the name of the defendant in the revenue record is incorrect and illegal? OPP
 - iii. Whether the plaintiff has become owner by way of adverse possession? OPP
 - iv. Whether the plaintiff is entitled to the declaration as consequential relief of permanent injunction? OPP
 - v. Whether the plaintiff is entitled to possession of the suit land in alternative? OPP
 - vi. Whether the suit is not maintainable as the plaintiff has sought alternative relief ? OPD
 - vii. Relief.

6. The counsel for the plaintiff examined PW-1 Kartar Singh son/power of attorney holder of plaintiff Dayal Singh. He proved power of attorney Ex.P1 and reiterated the pleadings of the plaint. PW-2 Shanno, PW-3 Haro and PW-4 Durga Dass also corroborated the testimony of PW-1. Besides aforesaid oral evidence, the plaintiff also produced Jamabandi Ex.P3 for the year 1976-77, Jamabandi Ex.P5 for the year 1916-17, Khautani Ishtemal Ex.P4, Khasra Girdwari for the period from 1979 to 1981 Ex.P6, Naksha Hakdarwar, Jamabandi for the year 1973-74 Ex.PX/2, Jamabandi for the year 1966-67 Ex.PX/3, Jamabandi for the year 1944-45 Ex.PX/4.
7. On the other hand the counsel for the defendants examined DW-1 Chattar Singh (defendant No.8), DW-2 Basant Ram and DW-3 Harnam Singh. In addition to the oral evidence, the defendants produced Jamabandi for the year 1981-82 Ex.D1, Khasra Girdwari for the year 1981-82 Ex.D2 and Khasra Girdwari for the year 1983 to 1985 Ex.D3.
8. The learned trial Court decreed the suit of the plaintiff/appellant vide judgment dated 13.1.1986 after going through the revenue record produced by both the parties and held that the plaintiff Dayal Singh became owner of the suit land by way of adverse possession.
9. Being aggrieved defendants / respondents filed appeal against the judgment dated 30.1.1986 passed by the learned trial Court.
10. The appeal filed by the defendants / respondents was accepted by the Court of learned Additional District Judge, Gurdaspur vide judgment

dated 11.11.1987 and the suit of the plaintiff/appellant was dismissed with observations that there is no evidence to prove that plaintiff Dayal Singh or his predecessor-in-interest ever asserted any hostile title or that a dispute with regard to ownership and possession of suit land had ever arisen. While passing the impugned judgment the 1st Appellate Court also referred to the revenue record produced by both the parties during the trial.

11. The plaintiff/appellant being aggrieved by the judgment and decree dated 11.11.1987 passed by the Court of Additional District Judge, Gurdaspur has filed the present appeal.
12. I have heard the counsel for the parties and gone through the record of the learned trial Court.
13. The learned Senior counsel for the appellant while assailing the impugned judgment passed by the Court of Additional District Judge, Gurdaspur has *inter alia* contended that the 1st Appellate Court without properly appreciating the evidence led by both the parties, set aside the well reasoned judgment dated 30.1.1986 passed by the learned trial Court. It has been further contended that the revenue record produced by the appellant was brushed aside by the 1st Appellate Court without assigning any reasons. While referring to Khatauni Ishtemal Ex.P4, the learned Senior counsel for the appellant has submitted that the said document was prepared by the revenue officials at the time of consolidation of holdings and further submitted that even in the said revenue record, appellant Dayal Singh was recorded as a 'Kabiz' over the suit land. The learned Senior counsel

further referred to Jamabandis Ex.PX/2 for 1973-74, Ex.P2/Ex.PX/1 for 1976-77 wherein also appellant-Dayal Singh was recorded as a 'Kabiz' over the suit property. The learned Senior counsel for the appellant has further submitted that even in the Khasra Girdawari Ex.P3 for 1979-80 appellant-Dayal Singh is recorded as a 'Kabiz' over the suit land. The learned Senior counsel for the appellant while going through the contents of the aforesaid revenue record submits that Durgi and other co-owners were recorded as 'Ghair Kabiz' in the said revenue record, which is for the period from consolidation of holdings till the filing of the suit. The learned Senior counsel for the appellant while referring to **Para No.281** of Punjab Land Settlement Manual has submitted that the right holder who is not in possession or has not been heard of for 7 years is described as 'Ghair Kabiz' or 'Ghair Hazir'. That **sub-para 3 of para 281** of Punjab Land Settlement Manual further provides that a right holder should not be entered as 'Ghair Kabiz' if he himself is in legal or constructive possession. Further an entry of 'Ghair Kabiz' should not be made unless some other person then the right holder is in adverse possession. The learned Senior counsel for the appellant has further argued that even in column No.4 of Jamabandi Ex.D1 for the year 1981-82, appellant Dayal Singh is recorded as 'Kabiz' over the suit property. Likewise appellant Dayal Singh is recorded as a 'Kabiz' in Khasra Girdwaries Ex.D2 and Ex.D3, which have been relied upon by the other party. It has been further contended that in their written statement, the respondents took plea that previously PW-3 Harro was

cultivating the suit land as a tenant, however, Harro while appearing in the witness-box denied this fact and stated on oath that he never cultivated the land in question. The learned Senior counsel for the appellant has further argued that even the presumption of truth attached to the revenue record produced by the respondents being rebuttable, is duly rebutted by the appellant. It has been further contended that the changes made in later entries of the revenue record which were relied upon by the respondents are not supported / corroborated by any order of revenue authorities on the basis of which the said changes were incorporated in the previous revenue record. That in the given circumstances the entries appearing in the earlier revenue record relied upon by the appellant would prevail upon the later entries. In order to strengthen his contention, the learned Senior counsel for the appellant has placed reliance upon judgment of this Court in **Chanda vs. Ram Chander, 1980 PLJ 561**. The learned Senior counsel for the appellant while referring to the decision of this Court in **Parkasho Devi vs. Tarsem Lal and Another, AIR 2003 (P&H) 245** has submitted that even otherwise the later entries in the revenue record were incorporated without any notice to appellant or his attorney and as such are illegal being incorporated without following instructions issued by Financial Commissioner (Revenue). In this context the learned Senior counsel for the appellant has also placed reliance on the decision of this Court in **Amal Kumar and Another vs. Bhupinder Singh Others, 1976 PLJ 26**. The learned Senior counsel for the appellant while referring to the oral statements

of PW-1 to PW-4 has submitted that the said oral evidence also corroborates the factual position as has been described in the revenue record produced by the appellant in the trial Court. The learned Senior counsel for the appellant has further argued that in the light of the aforecited settled position of law, the factual matrix with regard to entries appearing in the revenue record showing status of appellant Dayal Singh as 'Kabiz' over the suit land coupled with the provisions of **para No.281** of Punjab Land Settlement Manual, it stands proved that appellant Dayal Singh was in adverse possession of the suit land for the last more than 40/50 years and his possession was continuous, open and hostile even at the time of filing of the suit.

14. The learned Senior counsel for the appellant has further contended that the plea of adverse possession taken by the appellant/plaintiff cannot be declined on the ground that such plea could be used only as a weapon of defence. In support of his arguments, the learned Senior counsel for the appellant has referred to the judgment passed by the Hon'ble Supreme Court in **Ravinder Kaur Grewal vs. Manjit Kaur and Ors. (2019)8 SCC 729** wherein it was held that law of adverse possession does not qualify only a defendant for acquisition of title by way of adverse possession, it may be perfected by a person, who is filing a suit.

15. The learned Senior counsel for the appellant has further contended in the instant case, it stands fully proved that the appellant became owner of the suit land by way of adverse possession at the time of filing of the suit and thus the impugned judgment is liable to be set

aside and the suit of the appellant deserves to be decreed in toto or otherwise to the extent of 1/4th share out of the suit land.

16. On the other hand, the counsel for the respondents while supporting the impugned judgment dated 11.11.1987 passed by the Court of Additional District Judge, Gurdaspur has *inter alia* contended that in the plaint, appellant took plea that he is owner of the suit property on the basis of natural succession and in alternative the appellant made prayer that he has become owner of the suit land by way of adverse possession. It has been further contended that both the aforesaid pleas taken by the appellant are mutually inconsistent and thus are not tenable. The counsel for the respondent while referring to the judgment passed by the Hon'ble Supreme Court in **Civil Appeal No.83 of 2008 Dagadabai (dead) by LRs vs. Abbas @ Gulab Rustam Pinjari** decided on **18.4.2017**, has submitted that a person who claims ownership of land by adverse possession, has to firstly admit ownership of the true owner (respondents).
17. The counsel for the respondents has further argued that it is settled position of law as has been rightly held by the 1st Appellate Court that in case of conflict between prior entries and later entries in the revenue records, the later entries appearing in the revenue record, which will take precedence over the old entries and will be entitled to the presumption of correctness until and unless it is shown to be wrong or substituted by another entry. In this regard the counsel for the respondents has placed reliance upon the decision of Hon'ble Supreme Court in **Shri Raja Durga Singh of Solan vs. Tholu and**

Ors. 1963 AIR(SC) 361. The counsel for the respondent has further contended that this being the settled position of law, entries in Jambandi Ex.D1 for year 1981-82 will prevail upon the entries in the previous Jamabandis. The counsel for the respondent while referring to Jamabandi Ex.D1 has submitted that in the said revenue record for the year 1981-82 Smt. Durgi, Chattar Singh and others are recorded to be owners of the suit land and as per the entries in column No.5 of the said Jamabandi owners were recorded to be in possession of 17 Kanal 4 Marla out of the suit land, while the remaining portion is in possession of co-owner Chattar Singh (defendant No.8). That likewise in Khasra Girdawaris Ex.D2 and Ex.D3, Chattar Singh is recorded to be in possession of major portion of the suit land while the remaining suit land was shown to be in possession of all the co-owners.

18. The counsel for the respondents has further contended that even if the revenue records relied upon by the appellant are taken into consideration, it is apparent that Smt. Durgi, Chattar Singh and Ors. were recorded to be owners of the suit land and as per entry in column of ownership, appellant-Dayal Singh was recorded to be in possession of the suit land. That however in column of name of cultivator, it was recorded to be self-cultivated and in possession of all the co-sharers. The counsel for the respondents has further contended that thus there is no specific entry even in the revenue records produced by the appellant to show that appellant Dayal Singh was in exclusive possession of the suit property. That in case Dayal Singh was

claiming himself to be co-sharer, then also the respondents being co-owners have interest in the whole property and also in every parcel of it and thus a co-sharer cannot raise plea of adverse possession against the respondents (co-owners).

19. The counsel for the respondents has further submitted that from the perusal of the plaint, it is evident that the plea of adverse possession taken by the appellant is not specific as it is not clear as to on what date appellant came into possession and what was the nature of his possession. It has been further submitted that it was for the appellant to clearly plead and prove all facts to establish his adverse possession. The counsel for the respondent has further contended that in the present case appellant Dayal Singh himself did not appear in the witness box in order to prove his case and thus adverse inference should be drawn against him. The counsel for the respondent while concluding his arguments has submitted that there is no merit in the present appeal and the same deserves to be dismissed.
20. I have heard the counsel for the parties.
21. In the present case the appellant has claimed title to the suit property on the basis of natural succession and in alternative by way of adverse possession.
22. At the outset, it is important to make reference to the judgments passed by Hon'ble Supreme Court to enumerate settled position of law relating to adverse possession.

23. In **Annasaheb Babusaheb Patil vs. Baldwin Babhsaheb Patial**, AIR **1995 SC 895**, the Hon'ble Apex Court while dealing with a case of adverse possession opined as follows:-

“That adverse possession means a hostile assertions that is a possession which is expressed or implied and with continuity of title of the true owner. Article 65 of the Schedule to the Limitation Act, 1963 prescribes that for possession of immovable property or any interest therein based on title, the limitation of 12 years begins to run from the date of the defendant's interest becomes adverse to the plaintiff. Adverse possession means a hostile assertion i.e. a possession which is expressly or impliedly in denial of title of the true owner. Under [Article 65](#), burden is on the defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. Where possession could be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another, does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no tide at all”.

24. The Hon'ble Supreme Court in **Karnataka Board of Wakf vs. Government of India and Ors. (2004)10 SCC 779**, has held as under:-

“Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. ([Dr. Mahesh Chand Sharma v. Raj Kumari Sharma](#) (1996) 8 SCC128).

Plaintiff, filing a title suit should be very clear about the origin of title over the property. He must specifically plead it. (See: [S M Karim v. Bibi Sakinal](#) AIR 1964 SC 1254). In [P Periasami v. P Periathambi](#) (1995) 6 SCC 523 this Court ruled that - "Whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property." The pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced”.

25. The abovestated settled position of law has been recently reiterated by the Hon'ble Supreme Court in **Narasamma and Ors vs. A.Krishnappa through his LRs Civil Appeal No.2710 of 2010 decided on 26th August, 2020**.

26. The Hon'ble Supreme Court in **Ravinder Kaur Grewal's** case (supra) has held that adverse possessee/possessory owner cannot only seek to protect his title as defendant in a suit but can also file suit for

declaration of his title and for permanent injunction restraining defendant from interfering from his possession, where owner whose title stood extinguish or any other person seeks to dispossess him from property and thus the plaintiff could use plea of adverse possession even as a sword.

27. It is also appropriate to enumerate the settled law with regard to entries appearing in the revenue record.
28. In **Shri Raja Durga Singh's** case (supra), the Hon'ble Apex Court held that if there is conflict between later entry in Jamabandi and earlier one, the later entry as against the earlier entry should prevail. The similar view was taken by this Court in **Mahant Gurdit Singh vs. SGPC 1972 PLJ 379; Roop Singh vs. Ram Singh, 1988 PLJ 209; and Gurcharan Singh vs. Kehar Singh, 1996(3) RCR (Civil) 673**. However in **Chand's** case (supra), this Court held that the later revenue entries prevail over the earlier ones in relation to the jamabandis but when change is made in the later revenue entries without any mutation or an order of the revenue authorities showing how the change was made, the presumption in favour of the later revenue entries cannot be raised under Section 44 of the Punjab Land Revenue Act, but proceeds back to the earlier entries.
29. So the settled position of law is that if there is conflict between the later entry and earlier one, the later entry in the jamabandi as against the earlier entry should prevail. However, if it is shown that later entry is null and void the earlier one has to prevail. If the entry in later jamabandi is found to be inconsistent with the previous one and

there is no explanation with regard to same, no reliance can be placed on the later jamabandi.

30. **Para No.281** of the Punjab Settlement Manual which has been referred by the counsel for the appellant, reads as follows:-

“281. Existing rules on the subject. The existing rules on the subject are as follows:-

- (1) When a right-holder entered, in the record-of-rights or annual record whether he is or is not described therein as an absentee (ghair hazir) or as out of possession (ghair kabiz), has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the officer attesting a mutation may (unless he sees reason to the contrary) presume that he is dead and pass orders on the case accordingly; but before ordering the omission of his name from the record-of-rights or annual record such officer should satisfy himself that all reasonable endeavour has been made to ascertain whether the absentee is alive and to give him an opportunity of appearing."
- (2) When a right-holder entered in the record-of-rights or annual record as ghair hazir or ghair kabiz has been heard of within seven years, but has been so entered for more than twelve years, the patwari shall enter the case in his register of mutations and shall report it to a Revenue Officer. The Revenue Officer to whom the case is reported shall enquire into the question whether the right- holder has abandoned the land or his interest therein. All reasonable endeavour shall be made to give the right-holder an opportunity of appearing and stating his claim. Direct evidence of an intention of abandonment will rarely be forthcoming; but the intention of the right-holder may be inferred from what can be ascertained in regard to his conduct. Long absence coupled with entire severance from all concern with the land or interest is a strong circumstance to be taken into consideration in determining whether there has been abandonment or not. If, the Revenue Officer finds that the right holder has abandoned the land he shall pass an order accordingly.

Provided that, if the right-holder was a minor when first recorded as ghair hazir or ghair kabiz, no such order shall be passed until it appears that he is, or if still living would be, thirty years of age.

- (3) No new entry of any one as ghair hazir should be made. A right-holder should not be entered as ghair kabiz if he is himself in legal or constructive possession, as when he has put some one else in possession on his behalf, or the land is lying waste, or he is by reason of poverty unable to cultivate it. A familiar instance would be where a sepoy has left his land in his brother's possession while he is with his regiment. In such a case the sepoy should be entered as in possession of the land through his

brother. An entry of ghair kabir should not be made unless some other person than the right-holder is in adverse possession.

- (4) No effect shall be given to any order (1) directing the omission from the record of the name of a right-holder who has been entered as ghair hazir or ghair kabiz or (2) directing the entry of a right-holder as ghair kabiz, until such order has been confirmed by the Collector or Revenue Extra Assistant Commissioner.
- (5) All such orders shall be preserved as orders sanctioning mutations in the records.

31. Undoubtedly word 'Kabiz' does not find any mention in para No.281 (supra). Further as per **sub-para 3 of Para No.281** (supra) an entry of 'Ghair Kabiz' should not be made unless some other person than the right holder is in adverse possession. **sub-para 4 of Para No.281** (supra) provides that no effect shall be given to any order (1) xxxx or (2) directing the entry of a right holder as 'Ghair Kabiz' until such order has been **confirmed** by the Collector or Revenue Extra Assistant Commissioner. Furthermore **sub-para 5 of Para No.281** (supra) provides that all such orders shall be preserved as orders sanctioning mutations in the records. Admittedly in the present case no such order of confirmation is produced by the appellant.
32. The counsel for the appellant has placed reliance upon jamabandi for 1916-17 Ex.P5, jamabandi for 1944-45 Ex.PX/4, jamabandi for 1966-67 Ex.PX/3, jamabandi for 1976-77 Ex.P3 in order to prove the adverse possession of the appellant over the suit property. He also referred to the entries appearing in Khasra Girdawaris for the period from 1979-1981, in order to establish his case. Perusal of jamabandi for 1916-17 reveals that predecessor-in-interest of appellant-Dayal Singh was recorded as a co-sharer along with Bhaktawar and others.

As per jamabandi for 1944-45 predecessor-in-interest of respondents No.2 to 4 was recorded to be in possession of $\frac{1}{4}$ th share, respondent No.6 is also recorded to be in possession of $\frac{1}{4}$ th share along with appellant-Dayal Singh, who was recorded to be in possession ('Kabiz') of $\frac{1}{2}$ share of the land in the column of cultivation, while in column of ownership the predecessor-in-interest of respondents No.2 to 4 was recorded as co-owner along with respondent No.6. In jamabandi for 1966-67 respondents No.3, 4, 7 and Durgi Predecessor-in-interest of respondent No.1 were recorded as co-sharers and respondent No.6, 7 are recorded to be in possession of $\frac{1}{4}$ th share each while appellant-Dayal Singh is recorded to be in possession ('Kabiz') of $\frac{1}{2}$ share. It is settled law that possession of joint property by one co-owner is in the eye of law, possession of all even if all but one are actually out of possession and further a co-owner has interest in the whole property and also in every parcel of it. A mere occupation of a larger portion or even of entire joint property does not necessarily amount to ouster as the possession of one co-sharer is deemed to be on behalf of all. In this context reference is made to decision of the Full Bench of this Court in **Bhartu vs. Ram Sarup, 1981 PLJ 204**. In view of aforesaid settled position of law entries recorded in the aforesaid jamabandis are not of any help to the appellant to prove the plea of adverse possession, the reason being in jamabandis for the year 1944-45 and 1966-67, some of the co-sharers (right holders) were also recorded to be in possession of certain portion of the suit land along with Dayal Singh and in jamabandi for the year 1916-17

Kirpu son of Moti (predecessor-in-interest of the appellant) was shown to be in possession as one of the co-sharer while in some other portion Sunder and others were recorded to be in possession.

33. That apart, reading of jamabandis for 1973-74 and 1976-77 reveals that in ownership column Durgi (predecessor-in-interest) of respondent No.1 etc. were having $\frac{1}{2}$ share, respondent No.6 having $\frac{1}{2}$ share but were 'Ghair Kabizan' while appellant Dayal Singh recorded as a 'Kabiz'. However, in cultivation column the land is recorded to be self-cultivated and 'Makbuza Malkan'. Admittedly the appellant filed suit on the basis of adverse possession in 1983.
34. It is also trite law that mere long period of possession does not always translate into adverse possession as has been by the Hon'ble Apex Court in **Civil Appeal No.3142-2010 Government of Kerela vs. Joshep and Ors.** decided on **9.8.2023**. Furthermore a person who claims title to the property by adverse possession must definitely allege and prove as to how and when adverse possession commenced and what was the nature of his possession. A person raising plea of adverse possession is indirectly admitting ownership rights of the opposite party over the property in question. In the instant case, from the perusal of the plaint it could not be made out as to when the adverse possession commenced and what was the nature of the possession of the appellant over the suit property at the initial stage and at which stage the right holders were ousted from the suit land.
35. Admittedly in the present case the appellant failed to appear in the witness-box and thus adverse inference in that behalf must be drawn

against him in the light of the law laid down by Hon'ble Supreme Court in **Kamakshi Builders vs. M/s Ambedkar Educational Society, AIR 2007 SC 2191**. It is also settled law that power of attorney holder cannot depose in place of his principal regarding facts which principal alone has personal knowledge. In this regard reference is made to **Man Kaur vs. Hartar Singh Sangha (2010) 10 SCC 512**.

36. In the instant case PW-1 Kartar Singh attorney holder of the appellant was just 27 years of age when he appeared in the witness box and as such was having no personal knowledge about starting point of alleged adverse possession and as to when the recorded owners were dispossessed from the suit land.
37. In the light of the above discussion, the appellant has failed to prove that he was having possession adverse to that of owners over the suit land, continuously for the last more than 12 year at the time of filing of the suit in 1983.
38. From the perusal of 'Khautani Ishtemal', it appears that the appellant or his predecessor-in-interest was not recorded as owner or co-owner of the suit land, thus making it clear that they had not acquired any share in the suit land at the time of consolidation of holdings. The same is the position in jamabandis for 1973-74 and 1976-77. Thus the appellant has failed to prove that he was co-sharer in the suit land to the extent of $\frac{1}{4}$ th share.

39. This Court is of the view that there is no illegality or infirmity in the findings recorded by the 1st Appellate Court and the same are hereby affirmed for the reasons recorded hereinabove.
40. Consequently the appeal being devoid of merits is hereby dismissed.

03.11.2023
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No