

Sr. No.282 (3 cases)

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

Date of Decision: 15.05.2023

1) RSA No.693 of 2001 (O&M)

Punjab State Electricity Board and another

...Appellants

Vs.

Pushwinder Kaur @ Pushpinder Kaur (died) Through LR's and others

...Respondents

2) CR No.1062 of 2001 (O&M)

Punjab State Electricity Board and another

...Petitioners

Vs.

Pushwinder Kaur @ Pushpinder Kaur (died) Through LR's and others

...Respondents

3) CR No.1063 of 2001 (O&M)

Punjab State Electricity Board and another

...Petitioners

Vs.

Pushwinder Kaur @ Pushpinder Kaur (died) Through LR's and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:

Mr. Amit Jain, Sr. Advocate
with Ms. Aeshna Jain, Advocate
and
Ms. Anu Chatrath, Sr. Advocate
with Mr. Nishant Maini, Advocate and
Ms. Sandeep Kaur, Advocate
(for appellant/petitioner/defendants)

Mr. Sanjay Kaushal, Sr. Advocate
with Mr. Kanwal Goyal, Advocate &
Ms. Ojaswini, Advocate
(for respondent/plaintiffs)

Mr. Vikas Mohan Gupta, Additional Advocate General, Punjab.

ARUN MONGA, J.

Lis herein is over the rival claims of ownership of suit land *viz.* right of appellants set up on the basis of possession *vis-a-vis* the rights/title of the plaintiffs-respondents, as mentioned in the revenue record entries.

Adjudication of the dispute *inter-alia* pivots on the following important questions of law :-

- i). Whether State can turn from protector to predator in relation to the property of a citizen and set up a plea of ownership by adverse possession?
- ii). Whether the constitutional guarantee of a citizen's right under Article 14 to equality before the law and equal protection of the laws *per se* prevents the 'State' from asserting or claiming ownership by adverse possession?
- iii). If it is established that an owner has been out of possession of the property and another individual or the State entity has been in its hostile possession continuously, openly, notoriously and to owner's knowledge for the statutory period of 12 years, will owner's rights stand extinguished and vest the *de jure* ownership in the former?

2. This common judgment/order will dispose of three cases, as they arise out of the same suit proceedings i.e. i). Regular Second appeal bearing RSA No.693 of 2001 ; ii). Civil Revision petition bearing CR No.1062 of 2001; iii). Civil Revision petition bearing CR No.1063 of 2001.

3. For convenience, parties herein are addressed as per the recitals before learned trial Court. Adverting first to the main case i.e. second appeal. Having suffered concurrent adverse findings by the two Courts below, erstwhile PSEB-Punjab State Electricity Board (contesting defendant) is in appeal before this Court to defend possession of suit land using the claim/shield of acquiring title by adverse possession. Assailed herein are learned trial Court judgment and decree dated 16.11.1999 decreeing the plaintiffs' suit for possession and learned First Appellate Court judgment and decree dated 09.02.2001, reaffirming the judgment passed by the trial court.

4. Prior to delving into the facts and debating the merits of the current case, let us begin by addressing the aforementioned three questions of law, which are of generic nature. In pursuit thereof, it may well be worthwhile to also first deal with the fundamentals of common law concept of adverse possession, since it is not statutorily defined, it's very genesis, modern day perspective and continued existence, despite severe criticism, and only then claim of the State to seek benefit thereof, on parity with any other non-state entity or individual, can be appreciated. The legal concept of adverse possession, which grants ownership based on long-term possession, has ancient origins and can be found in diverse civilizations and legal systems throughout history. Its earliest foundations can be seen in Roman law, where the doctrine of *usucapion* enabled individuals to obtain property ownership by maintaining uninterrupted possession for a specified period. This principle of acquiring rights through extended possession laid the groundwork for the development of the modern concept of adverse possession. Although this legal concept is also stated to predate even the Roman civilization, dating back to the reign of King Hammurabi of Babylon around 1754 BCE during the Babylonian civilization that flourished in Mesopotamia, located in present-day Iraq, during the period from approximately 1894 BCE to 539 BCE.

4.1. As opposed to the legal concept of adverse possession, a Shakespearean quote succinctly sums up common sense idea of title in any property as below :-

*For true it is, that neither fraud nor might
Can make a title where there wanteth right.¹*

4.2. The quote above expresses the idea that no amount of deception or power can create a legitimate claim where there is none. Ultimately, the legitimacy of a claim depends on the strength of the evidence and the validity of the

¹ From the play "The Famous History of the Life of King Henry the Eighth" by William Shakespeare. The lines are spoken by the character Archbishop Cranmer.

arguments supporting it, not on the force or cunning of those making the claim. Indeed, the idea that legitimacy cannot be manufactured through deception or power or coercion. This is the cornerstone of any fair and just society and is essential for ensuring that individuals and institutions are held accountable for their actions and decisions. In the legal context, this principle underlines the importance of due process, evidence-based decision making and the rule of law.

4.3. The legal concept of "**Adverse Possession**" has been passed down to us from English law and also continues to be relevant in the United States till date. Its evolution and current perspectives have been extensively discussed in a noteworthy 2011 judgment by the Supreme Court of Rhode Island in the case of *Melanie v. Margaret*², relevant extract thereof is as below :-

“Before we begin our analysis, a brief history of adverse possession may be of assistance. After first using an amalgamation of Roman and Germanic doctrine, our English predecessors in common law later settled upon statutes of limitation to effect adverse possession. In practice, the statutes eliminated a rightful owner's ability to regain possession after the passing of a certain number of years, thereby vesting de facto title in the adverse possessor.

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Essentially, in England, the original policy supporting the development of adverse possession affected society's unwillingness to take away a 'right' which an adverse possessor thought he had.

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As an overarching principle, however the English adhered to an irrefutable truth that “neither fraud nor might can make a title where there wanteth right.”

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In the United States, although the 1623 statute of King James came some years after the settling of Jamestown (the usual date fixed as the crystalizing of the common law in America), its fiat is generally accepted as our common law. Hence ‘adverse possession’ for 20 years under the common law in this country passes title to the adverse possessor with certain stated qualifications.” Today, all fifty states have some statutory form of adverse possession, typically requiring proof that “possession was actual, hostile, open and notorious, exclusive, and continuous for the period of the statute of limitations. Color of title and payment of taxes can also be elements in some cases.”

² *Melanie B. Cahill v. Margaret P. MORROW*, Individually and in her capacity as Executrix of the Estate of George R. Morrow.No.2008-34-Appeal, Decided : January 20, 2011 by Supreme Court of Rhode Island

Given the doctrine's widespread codification in this country, adverse possession is certainly "part of our adoptive consciousness." Courts and commentators generally ascribe to "four traditional justifications or clusters of justifications which support transferring the entitlement to the adverse possessor after the statute of limitations runs: the problem of lost evidence, the desirability of quieting titles, the interest in discouraging sleeping owners, and the reliance interests of adverse possessors and interested third persons." Effectively, our society has made a policy determination that "all things should be used according to their nature and purpose" and when an individual uses and preserves property "for a certain length of time, he has done a work beneficial to the community." For his efforts, "his reward is the conferring upon him of the title to the thing used" Id. Esteemed jurist Oliver Wendell Holmes, Jr. went a step further than Teisen, basing our society's tolerance of adverse possession on the ideal that "a thing which you have enjoyed and used as your own for a long time, whether property or an opinion, takes root in your being and cannot be torn away without your resenting the act and trying to defend yourself, however you came by it."

4.4. *Qua* adverse possession *vis-a-vis* its criticism, for educative purpose, reference may also be had to an article published in Harvard Law Review³, which in turn is based on extensive English and American case law research, relevant extracts thereof is herein below:-

"TITLE by adverse possession sounds, at first blush, like title by TITLE theft or robbery, a primitive method of acquiring land without paying for it. When the novice is told that by the weight of authority not even good faith is a requisite, the doctrine apparently affords an anomalous instance of maturing a wrong into a right contrary to one of the most fundamental axioms of the law.

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"English lawyers regard not the merit of the possessor, but the demerit of the one out of possession."

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The statute has not for its object to reward the diligent trespasser for his wrong nor yet to penalize the negligent and dormant owner for sleeping upon his rights; the great purpose is automatically to quiet all titles which are openly and consistently asserted, to provide proof of meritorious titles, and correct errors in conveyancing.

Although in general a tortious act can never be the foundation of a legal or equitable title, yet if the exercise of apparent ownership is made conclusive evidence of title, this wholesale method necessarily

³ Title by Adverse Possession, Authored by Henry W. Ballantine : Source Harvard Law Review, December 1918, Vol. 32 No.2 pp. 135-159

establishes and quiets the bad along with the good. The trespasser benefits, the true owner suffers, for the repose of meritorious titles generally. As Sir Frederick Pollock puts it, "It is better to favor some unjust than to vex many just occupiers."

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Title deeds are nothing but the history or evidence of the transfer of rights arising from possession, reaching back perhaps to "that mailed marauder, that royal robber," that great adverse possessor,- William the Conqueror. "Every title to land has its root in seisin; the title which has its root in the oldest seisin is the best title."⁹

⁹POLLOCK & MAITLAND, HIST. ENGL.LAW, 46. See Pollock's ed., MAINE, ANCIENT LAW, ch. 8, 267, 295, 314

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Consequently it was held in England that the right of entry and the remedy by ejectment, might be barred, but that the "mere right" itself was left outstanding. To remedy this the Statute 3 & 4 William IV, C.27 (1833), was enacted, which not only bars the remedy of ejectment but expressly abolishes real actions and extinguishes the former title after twenty years. By the Real Property Limitation Act of 1874¹⁷ the period of limitation is reduced to twelve years from the time the right of action first accrued.

American statutes quite commonly follow the parent statute of James I. Illinois, for example, enacts:¹⁸

"That no person shall commence an action for the recovery of lands, nor make an entry thereon, unless within twenty years (1) after the right to bring such action or make such entry first accrued, or (2) within twenty years after he or those from, by, or under whom he claims, have been seized or possessed of the premises."

¹⁷ 37 & 38 Vict.c. 57.

¹⁸HURD's ILL.Rev. Stat. (1917) ch. 83, 1.

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It seems a necessary consequence of the policy underlying the limitation acts that one should be considered to have no right or title when the most essential incident or legal consequence of title, the right to recover possession, is barred. Hopeless confusion would result from the recognition of any such anomalous titles, without right of possession, surviving the statute. The maxim that where there is a right there is a remedy may be turned about e converso, so that where there is no remedy there is no right. The only cloud on the possessor's title is the true owner's right to recover possession by entry or ejectment, or by some other remedy, and when these remedies are all taken away by the statute or by analogy thereto, the defect in the possessory title becomes cured.

It has indeed been said by some eminent judges that the effect of the statute is "to make a parliamentary conveyance of the land to the person in possession at the last moment when the period has elapsed." As Gibson, C. J., puts it, "The instant of conception is the instant of

birth," without any period of gestation or maturing of an inchoate title.

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Adverse possession vests the possessor with the complete title as effectually as if there had been a conveyance by the former owner. But the title is independent, not derivative, and "relates back" to the inception of the adverse possession. The adverse possessor does not derive his title from the former owner, but from a new source of title, his own possession.

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The idea seems to be that the statute of limitations is a conveyancer like the Statute of Uses, which, when there is a deed by Doe to the use of Roe and his heirs, "executes the use," and,

*"Like flash of electricity,
The land's transferr'd in fee to Roe,
Nothing at all remains in Doe."*

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4.5. Doe and Joe quote above is a legal mnemonic used to poetically describe the basic elements of a valid land transfer. It suggests that when land is transferred from one person (the "transferor" or "grantor") to another (the "transferee" or "grantee"), the transfer is complete and nothing remains with the original owner ("Doe"). The new owner ("Roe") holds unto himself the property on payment of consideration ("fee"), which is the most complete form of ownership.

Thus, *"To constitute a valid transfer of property in land, there must be a transfer in writing, signed by the transferor, and the property must be identified with reasonable certainty. The transferor must also deliver it to the transferee, and the transferee must accept the transfer."*

4.6. No doubt, the concept of adverse possession is very controversial, as it results in someone obtaining legal title to property, for which he did not pay or has no other right therein. Most certainly, it creates a situation where someone who is though true owner, but being dispossessed, on lapse of time, finds himself at risk of losing it to a rank stranger. In that sense, title by adverse possession surely can also be seen as a way of rewarding productive use of land by wrongful possession and discouraging owners from leaving their land unused or neglected.

4.7. Despite these concerns, law as it stands today in India, adverse possession has been recognized as a legitimate legal principle. Similar is the legal position in many other countries/jurisdictions around the world. It is thus a global phenomenon. In fact, a query posed to Artificial Intelligence⁴ elicited following information :-

“Question :-

Which countries recognise adverse possession as a legal principle ?

Response :-

Adverse possession, also known as squatter's rights or prescription, is a legal principle that allows a person who has occupied and used someone else's property without permission for a certain period of time to claim legal ownership of the property. The laws regarding adverse possession vary from country to country. Here are some countries that recognize adverse possession as a legal principle:

- 1. United States: Adverse possession is recognized in all 50 states, but the rules vary depending on the state.*
- 2. United Kingdom: Adverse possession is recognized in England, Wales, and Northern Ireland, but not in Scotland.*
- 3. Australia: Adverse possession is recognized in most Australian states and territories, but the rules vary depending on the jurisdiction.*
- 4. Canada: Adverse possession is recognized in some provinces, including British Columbia, Ontario, and Alberta, but the rules vary depending on the province.*
- 5. India: Adverse possession is recognized under the Limitation Act, 1963, which specifies the time period for adverse possession claims.*
- 6. New Zealand: Adverse possession is recognized under the Land Transfer Act 1952, but the rules have been amended several times.*
- 7. Ireland: Adverse possession is recognized under the Land and Conveyancing Law Reform Act 2009.”*

4.8. Acquiring title by adverse possession, therefore, typically is subject to three legal requirements which are *sine qua non* i.e. use of the property to be a) *nec-vi* : adequately continuous, b) *nec-clam* : publicly open, and c) *nec-precario* ; hostile to the owner's interests. Concept of ownership by adverse possession thus focuses on the actions of the parties involved rather than their morality or character. In other words, the law is not concerned with whether the possessor is a good or bad person, but rather with whether they have met the legal requirements

⁴ Source - ChatGPT

for ownership by adverse possession. The goal of the statute that governs acquiring ownership by adverse possession is neither to reward someone for wrongfully taking another's property, nor to punish the owner for neglecting their rights. Instead, it aims to ensure that property titles are clear and unambiguous, by allowing people who have openly and consistently possessed the same to claim its ownership. The concept of possessory title thus envisages that a person who has de facto possession of a property for adequately long period, as may be prescribed in law, is presumed to become its owner. His possession is protected against anyone who cannot prove a superior title to the property.

4.9. In India, the statutory period of dispossession leading to extinguishment of rights of the dispossessed is 12 years as per Section 27 of Limitation Act, 1968 read with Article 65 of the Schedule therein, which being apposite is reproduced herein below:-

“27. Extinguishment of right to property.—At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

THE SCHEDULE
(PERIODS OF LIMITATION)

65. For possession of immovable property or any interest therein based on title. <i>Explanation.—For the purposes of this article—</i> (a) where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession; (b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.
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<i>female, the possession of the defendant shall be deemed to become adverse only when the female dies;</i>		
<i>(c)where the suit is by a purchaser at a sale in execution of a decree when the judgment debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession.</i>		

5. Now the question, can state claim property of an individual by acquiring ownership through adverse possession ? Law as it stands today, does not bar the State or State entity to seek parity with an individual for claiming ownership by way an adverse possession. Supreme Court in *State versus Mukesh Kumar*⁵, held that the Government should protect the property of a citizen—not steal it. And yet, as the law currently stands, they may do just that. In this context, reference may also be had to the concept of adverse possession as well as possessory title from the Halsbury’s Laws of India vis-à-vis England. For ready reference, relevant is reproduced herein below:-

Halsbury’s Laws of India

“[240.046] Adverse possession: *A person claiming adverse possession must prove his possession nec vi, nec clam, necprecario. Meaning that he must show that his possession is adequate in continuity, in publicity and in extent¹. The burden lies heavily on the member setting up adverse possession to prove the adverse character of his possession by establishing affirmatively that to the knowledge of other members he asserted his exclusive title and the other members were completely excluded from enjoying that property and that such adverse possession had continued for the statutory period². In respect of adverse possession with regard to an office for instance trusteeship, unless there is a rightful claimant to the office, no person may set up additional title by adverse possession³.*

1. *S M Karim v Bibi Sakina* AIR 1964 SC 1254, [1964] 6 SCR 780, (1964) 2 SCJ 224.
2. *AnnasahebBapusahebPatil v Balwant* AIR 1995 SC 895, (1995) 2 SCC 543, (1995) 1 JT 370.
3. *MunuswamiChetti (dec'd) v Commr, HRE CE (Admn)*, Madras AIR 1993 Mad 144, (1993) 1 Mad LJ 183, (1992) 1 LW 510.

⁵(2011) 10 Supreme Court Cases 404

[240.049] Possession prima facie title: *The presumption of law is that the person who has de facto possession, also has the property, and accordingly such possession is protected¹, whatever its origin, against all who may not prove a superior title². Thus, as against a stranger or a wrongdoer, a person in actual or apparent possession, however without the right to possession, has all the rights and remedies of a person entitled to and able to prove a present right to possession.³*

1. *Wilbraham v Snow* (1670) 2 WmsSaund 47; *Jones v Williams* (1837) 2 M & W 326 at 331 *Jeffries v Great Western Rly Co* (1856) 5 E & B 802 at 806; *Elwes v Brigg Gas Co* (1886) 33 ChD 562 at 569; *South Staffordshire Water Co v Sharman* [1896] 2 QB 44 at 45-46, DC; *The Winkfield* [1902] P 42, CA; *Glenwood Lumber Co Ltd v Phillips* [1904] AC 405 at 410, PC; *Daniel v Rogers* [1918] 2 KB 228, CA; *O'Sullivan v Williams* [1992] 3 All ER 385, CA.
2. *Rogers v Spence* (1844) 13 M & W 571, Ex Ch; *Moffatt v Kazana* [1969] 2 QB 152, [1968] 3 All ER 271. It is otherwise where the wrongdoer's title is lawfully divested; *Buckley v Gross* (1863) 3 B & S 566.
3. *Armory v Delamirie* (1722) 1 Stra 505; *Bridges v Hawkesworth* (1851) 21 LJQB 75; *Bourne Fosbrooke* (1865) 18 CBNS 515; see also *Jeffries v Great Western Rly Co* (1856) 5 E & B 802 at 805 per Lord Campbell CJ; *Eastern Construction Co Ltd v National Trust Co Ltd and Schmidt* [1914] AC 197 at 210, PC; *ChabbraCorp Pvt. Ltd. v Jag Shakti (Owners). The Jag Shakti* [1986] AC 337, [1986] 1 All ER 480, PC. In relation to a claim in negligence: see *Leigh and Silavan Ltd Aliakmon Shipping Co Ltd* [1986] AC 785, [1986] 2 All ER 145, HI; *Transcontainer Express Ltd. v Custodian Security Ltd.* [1988] 1 Lloyd's Rep 128, CA; *Obestain Inc v National Mineral Development Corp Ltd. The Sanix Ace* [1987] 1 Lloyd's Rep 465. Where property is delivered to the person appearing to be the true owner, possession vests in him and a previous possessory title may no longer be relied upon: *Irving v National Provincial Bank Ltd.* [1962] 2 QB 73, [1962] 1 All ER 157, CA.

Halsbury's Laws of England

777. Position of person in adverse possession.

While a person who is in possession of land without title continues in possession, then, before the statutory period has elapsed, he has a transmissible interest in the property which is good against all the world except the rightful owner, but an interest which is liable at any moment to be defeated by the entry of the rightful owner; and, if that person is succeeded in possession by one claiming through him who holds until the expiration of the statutory period, the successor has then as good a right to the possession as if he himself had occupied for the whole period¹⁸.

^{18.} *Asher v Whitlock* (1865) LR 1 QB1; *Keeffe v Kirby* (1857) 6 ICLR 591; *Clarke v Clarke* (1868) IR:CL 395; *Perry Clissold* [1907] AC 73 at 79, PC; *Calder v Alexander* (1900) 16 TLR 294

6. The aforementioned paragraphs from Halsbury's Laws of India and England provide a clear explanation of the fundamental principles and burden of proof involved in claiming title by adverse possession and possessory title. These principles include establishing the adverse nature of possession and demonstrating its continuity, publicity and exclusivity for the specified statutory period. Importantly, there is no legal prohibition, whether statutory or through judicial decree, preventing the State (as a litigant before court) from seeking the same benefits as any other individual involved in such matters.

6.1. But the State should not be given *carte blanche* to claim the title of abandoned land by way of adverse possession, as it is the duty of the State to protect

and safeguard the interests of its citizens. In rare cases, of course, the State may be entitled to claim the ownership of the land in question by way of adverse possession. Such cases should be treated as rare as possible and exceptional, and cannot be allowed or considered as routine practice by the State, though law, as it stands, doesn't prohibit it. The State has to discharge important duty for the protection of the interests of its citizens and not abuse its power to seek/claim ownership of abandoned land through adverse possession. However, in exceptional circumstances where the State has a legitimate claim to the land, it may claim ownership by way of adverse possession. It is crucial to distinguish between routine practice and exceptional circumstances to ensure fairness and justice for all parties involved.

6.2. Again said, it is important to note that common law principles governing title by adverse possession should not be used to justify the State's abuse of power or disregard for the interests of citizens. The State should always act in accordance with the law and give due priority to its duty for the protection of citizens' property rights and interests. There is no doubt, scepticism and hesitation about applying the doctrine of adverse possession for the benefit of State in property dispute, due to the doctrine's ancient origins and perhaps outdated justifications. Therefore, depending on case to case, courts have to grapple with the tension between applying long-established legal doctrines and adapting to changing social and economic realities. The Apex Court in *Ravinder Kaur Grewal and others vs. Manjit Kaur and others*⁶ while acknowledging this tension, and questioning whether the doctrine of adverse possession is still a relevant and appropriate tool for resolving property disputes in today's society has left it open to the wisdom of Indian Parliament to take a call on it. Resultantly, as on today, the ongoing challenge of balancing tradition and innovation in the legal system, and the need for courts to carefully consider the implications of applying legal

⁶2019 AIR (Supreme Court) 3827

doctrine of adverse possession in modern contexts shall depend from case to case based on the evidence adduced.

6.3. Be that as it may, it seems that the State is not barred in setting up its claim of acquiring title by way of adverse possession. Provided, of course, if it can demonstrate the adverse character of its possession and that it has been hostile, open and notorious and continuous for the statutory period. In principle, State's possession satisfying *these conditions would extinguish the rights of any person to such property and bar the institution a suit by such person for possession of its possession.*

7. In the light of discussion and reasoning in preceding paras, the questions of law posed in the opening para of the instant judgment are answered in seriatim as below :-

i). State being a protector of the property rights of citizens cannot act as predator of their property. However, an exception to this general rule has been provided in Section 27 read with Article 65 of the Schedule to the Limitation Act. This exception is applicable across board to individuals as well as State entities. The law, as it stands today, is that apart from other recognized modes of transfer of ownership e.g. sale/purchase, gift, exchange etc and/or acquiring a citizen's property for public use in eminent domain on payment of compensation, the State can also acquire ownership through adverse possession.

ii). The constitutional assurance of a citizen's right to equality before the law and equal protection of the laws *per se* does not automatically prevent/prohibit the 'State' absolutely from asserting ownership through adverse possession. However, the State is still obligated to show fulfilment of the necessary conditions under the law for acquiring ownership by adverse possession i.e. by proving that it has been in continuous possession for a minimum period of 12 years; its possession is open, notorious, hostile and to the knowledge of the owner. If these conditions are met, the citizen forfeits his right to the property, entitling the State to claim the right of

ownership. But, ultimately, the court will evaluate on a case-by-case basis whether or not the State's claim to the property violates the citizen's right to equality before the law and equal protection of the laws.

iii). Indeed, once it is established that property owners have been out of possession and have not taken any action within the prescribed period to assert their ownership and an individual or State entity has been in possession of the property for 12 years continuously, openly, notoriously, hostile and to the knowledge of true owners, the latter's rights of ownership will be extinguished solely by lapse of time. This is because of the law of limitation, which is that a person's right to initiate legal action on a claim of ownership will be extinguished after the specified period, regardless the claim being otherwise valid. As of now, the statutory period for acquiring ownership by adverse possession is 12 years. Hence, if an individual or State entity has been in possession of a property continuously, openly, notoriously and hostile to the true owners and the latter have not taken any action within the prescribed period of 12 years to assert their ownership, the person/ State entity in possession will be recognized as the rightful owner of the property.

8. Let us now proceed with the case in hand.

Facts/Pleadings

9. Brief factual narrative first. Based on the ownership entries in *jamabandi* (revenue record), plaintiffs/respondents filed the suit in year 1997, asserting their title and seeking possession of land measuring 8 Kanals 1 Marla, claiming that they were owners of the property comprised in Khasra No.417 (8-1) along with the structure constructed thereon. It is alleged in the plaint that defendant-PSEB had no right title or interest in the property and its was in illegal and unauthorized possession. It is averred in plaint that cause of action arose when a month prior to filing the suit, plaintiffs asked the defendants-PSEB/its officials to hand over vacant possession of the suit property, but they refused. Hence the suit in the year 1997.

10. Upon notice, defendants appeared and opposed the claim of plaintiffs on various grounds. Board pleaded in its written statement that plaintiffs were not the owners of property. The property was in possession of the PSEB for the last more than 30 years continuously, open, notorious and as such the answering defendants had become its owners by way of adverse possession. It was denied that defendant-Board was in illegal and unauthorized possession of the property in dispute. The office of the electricity had been working in the suit property since long. The defendants thus, alleged that they were in possession of the property as owners and there was no question of handing over the possession to plaintiffs. It was also contended that entries in favour of plaintiffs regarding ownership in *jamabandi* were wrong.

11. Plaintiffs in their replication pleaded new facts for the first time alleging that defendants were never put in possession of the suit property located in Khasra No.417 and belonging to plaintiffs. It was only the land in Khasra No.416, adjoining to the suit property in Khasra No.417, which was the ownership of Provincial Government where an old *bijlighar* (power house) was in existence. However, in the column of possession in *jamabandi*, the *bijlighar* had wrongly been shown in khasra No. 417. Only four years back in year 1994, the defendants by getting the benefit of wrong entries in the column of possession, had encroached upon the disputed property in Khasra No.417, taking advantage of the absence of plaintiffs as they were residing out of Sangrur at the time. Further, it was asserted that in the year 1994, the plaintiffs had taken over the possession of their land/rooms from their labour who were occupying the same with their permission. The defendant-Board, by breaking open the locks of building/rooms located on the west side, illegally occupied it. They denied that defendants had become owners of suit property by adverse possession. It was further alleged that defendants were estopped from taking up the plea of adverse possession being a Government undertaking and also that plaintiffs were entitled to *mesne profits* for illegal occupation of their property.

Issues framed by the trial court

12. Based on the rival pleadings, following issues were framed:

“1. Whether the plaintiffs are entitled to recover the possession of the property in dispute as prayed for? OPP

2. Whether the defendant PSEB has become owners of the property in dispute by way of adverse possession? OPD

3. Whether the suit is not maintainable? OPD

4. Relief.”

13. The parties to the suit adduced their oral as well as documentary evidence in support of their pleadings and to discharge their respective onus as per the issues, *ibid.*

14. On appraisal of evidence *vis-à-vis* pleadings, all issues were decided in favour of plaintiffs and against defendants. Consequently, the suit of plaintiffs was decreed by Ld. trial Court with costs.

15. Aggrieved, defendants/appellants preferred first appeal which was dismissed with costs by learned First Appellate Court, resulting in instant Regular Second Appeal before this Court.

Arguments/Contentions

16. Arguments of Mr. Amit Jain and Ms. Anu Chatrath, learned Senior counsels for appellant/defendant-Board substantially spiralled around following three propositions:-

- i). Possession of defendant, since 1945 (1936-37- if additional evidence is to be believed, more of it later), is concededly hostile *qua* rights of plaintiffs and is illegal and unlawful and thus adverse as pleaded in the plaint itself. While referring para Nos.2 & 3 of plaint, they would argue that neither is there any date of dispossession of plaintiffs mentioned in plaint nor is it their case that possession of appellants/defendants is authorized. Therefore, the suit cannot be allowed merely on the bald plea of title based

on the revenue entries, without there being otherwise any proof of the title of plaintiffs on record.

- ii). Since the date of dispossession has not been mentioned in the plaint, it must therefore be read out from the admitted revenue entries relied upon by the plaintiffs themselves, which, as per evidence on record is from year 1945 onwards. In case, the additional evidence vide Annexure R-1 is to be allowed then, *Jamabandi* of 1937-38 reflects that even prior to 1945, the possession was of predecessor-in-interest of PSEB i.e. Building and Roads department since 1937-38.
- iii). The suit is hopelessly barred by limitation in view of express provisions of Section 27 of Limitation Act.

17. Mr. Jain would urge that the plaint was lacking in necessary particulars as to when the plaintiffs were dispossessed which *per se* is fatal to the entire stand taken by the plaintiffs. He would point out that plaintiffs were fully aware of the said lacuna. The same was though tried to be filled for the first time by the testimony of PW-4, a power of attorney holder of plaintiffs. Pertinently, plaintiffs themselves never stepped into the witness box. He would also point out to the following stand taken for the first time, *sans* any pleadings, in the examination-in-chief of PW-4:

“The property in dispute is shown in site plan Ex.P1. Previous to 1993 our labour was residing in the property in dispute but when they vacated the property in 1993 the defendants entered into forcible possession of the property in dispute by breaking open the locks.”

17.1. He argued that there is not even a remote reference of the above facts in the plaint. The same is clearly an afterthought piece of evidence sans any pleading. He would argue that it is absurd and goes against common sense to believe that senior and accountable government officials would forcibly open locks and take possession without any personal benefit, especially considering that no specific official has been named. This lack of specific details indicates that the presented facts are concocted and completely fictitious.

18. He would further argue that it is in this background that appellants had filed an application before Ld. First Appellate court to adduce additional evidence under Order 41 Rule 27 CPC. Same was opposed by plaintiffs. The order of its dismissal passed by Ld. First Appellate Court is assailed in Civil Revision No.1062 of 2001. He would refer to plaintiffs' letter dated 23.09.1994 (Annexure A-1), which completely falsifies that plaintiff's stand herein. The letter shows that, in fact, since 1929 they have not been in possession of the suit property. He would argue that the said letter was written by plaintiff No.1 herself and not by her attorney. He read out the said letter, which is as below:-

"Since 1929 the property commonly known as 'Bijli Ghar' measuring 8 Kanal 1 Marla and bearing Khasra No.417 outside Dhuri Gate, Sangrur, belonged to my late father S. Mukand Singh.

The property though unoccupied is in the possession of P.S.E.B for which I am receiving no rent.

As I am a widow and I, earnestly request you to kindly release and hand over possession of the above said property to me at your earliest convenience, as I wish to build a small Hospital in the memory of my late husband. Your early action in the matter would be highly appreciated."

19. Furthermore, Mr. Jain would point out that Ex.DW-3/A i.e. *Jamabandi* for the year 1945-46 clearly shows that as back as 68 years ago, the possession was with appellants (firstly with the Provincial Government during British Rule followed by post-independence State of Punjab and then PSEB). He would also argue that possession was '*Bila Lagan*' i.e. without payment of rent. He emphasized that possession with the appellants without there being any obligation to pay rent, in itself, shows that it was to the knowledge of plaintiffs that the defendants' possession was hostile and unlawful *qua* their title rights of the suit property.

20. In this background, Ld. Senior Counsel would rely on section 27 of the Limitation Act read with Article 65 of the Schedule *ibid*.

“xxxx xxxxx xxxxx

56. Possession is the root of title and is right like the property. As ownership is also of different kinds of viz. sole ownership, contingent ownership, corporeal ownership, and legal equitable ownership. Limited ownership or limited right to property may be enjoyed by a holder. What can be prescribable against is limited to the rights of the holder. Possession confers enforceable right under Section 6 of the Specific Relief Act. It has to be looked into what kind of possession is enjoyed viz. *de facto* i.e. actual, “*de jure* possession”, constructive possession, concurrent possession over a small portion of the property. In case the owner is in symbolic possession, there is no dispossession, there can be formal, exclusive or joint possession. The joint possessor/co-owner possession is not presumed to be adverse. Personal law also plays a role to construe nature of possession.

xxxxx xxxxx xxxxx

59. We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit.

60. When we consider the law of adverse possession as has developed vis-à-vis to property dedicated to public use, courts have been loath to confer the right by adverse possession. There are instances when such properties are encroached upon and then a plea of adverse possession is raised. In such cases, on the land reserved for public utility, it is desirable that rights should not accrue. The law of adverse possession may cause harsh consequences, hence, we are constrained to observe that it would be advisable that concerning such properties dedicated to public cause, it is made clear in the statute of limitation that no rights can accrue by adverse possession.

xxxx xxxx xxxx”

21. In the aforesaid premise, he would argue that possession of defendant/appellants being adverse and hostile to the rights of plaintiffs for more than 68 years and the plaint being bereft of necessary particulars as to when the plaintiffs were dispossessed, the examination-in-chief of PW/4 which is a bald statement, without any further proof, that plaintiffs were dispossessed some time in 1993, flies in the face of entries in the revenue record entries produced in the case, including Ex.DW3/A and the proposed additional evidence which ought to have been allowed, proving that the possession in fact has throughout been with appellants even prior to

1935 and, therefore, the appeal ought to be allowed and the concurrent findings which are perverse on the face of evidence adduced be reversed and the suit be dismissed.

22. Ms. Anu Chatrath, learned senior counsel for the appellants had, in fact, additionally also submitted that, at relevant time, it was common practice for individuals having the means to act as good Samaritans for the betterment of society. They would generously offer their land, even if useful or needed by them, for the development of the area. Individuals, regardless of their profession or position, are capable of acting in their own way to contribute towards community welfare and the plaintiffs' family was very capable of that. She stated that the predecessors-in-interest of the plaintiffs having voluntarily handed over their land for being put to use for benefit of society, their successors are bound by it and cannot as *volte face* seek reversion of land to them after 6-7 decades. Though, on court query, *qua* any documentary proof or any gift deed etc. in support of her submission, nothing came forth stating that the said office record is of year 1928 or so, it has either got lost or destroyed or otherwise not untraceable despite best efforts. Hence the plea of adverse possession.

23. *Per contra*, Mr. Sanjay Kaushal, learned Senior counsel for plaintiff/respondents would argue that over-emphasis of learned Senior counsels appearing on behalf of appellants on Section 27 of Limitation Act is completely misdirected and *dehors* the position in law as it exists in the light of judgment of Supreme Court rendered in ***Utha Moidu Haji vs. Kuningarath Kunhabdulla and others***⁷ and that of this Court rendered in ***Joginder Kaur vs. Gurbachan Kaur and others***⁸. He would argue that Section 27 *ibid* does not stand on its own legs. It has to be read in conjunction with the Schedule of the Act. Resultantly, he would argue, Section 27 *ibid* in some ways is akin to Section 34 or Section 120-B IPC which *per se* cannot apply to independently to acts and is only supplementary to prime offending

⁷(2007) 14 SCC 792

⁸(2012) SCC OnLine P&H 10808

act. Likewise, in the present case, unless it is shown that the possession was adverse for more than 12 years from the knowledge of plaintiff, Section 27 *ibid* would not be invokable. He would rely on the testimony of PW4 *qua* plaintiffs being not in possession since 1993 and argue that the same has remained unshaken in the cross examination. He would also point out to the replication, wherein it is clearly stated that the defendants had encroached upon the disputed property 4 years back as the plaintiffs were residing out of Sangrur. He contended that since the suit was filed in 1997, it was well within 12 years, and therefore, not hit by limitation.

23.1. Furthermore, the learned Senior counsel would argue that it is trite law that unless the ingredients of Section 100 CPC are met with, this Court cannot invoke its jurisdiction in second appeal to interfere in the concurrent findings of the Courts below. He would state that neither any question of law has been argued nor even pleaded in the grounds of appeal and therefore, the second appeal is liable to be dismissed on that ground alone.

23.2. As regards the additional evidence which is sought to be adduced by virtue of civil revision arising out of dismissal of application under Order XLI Rule 27 CPC by Ld. First Appellate Court vide order dated 09.02.2001, learned Senior counsel for plaintiffs/respondents would argue that the civil revision itself is not maintainable in the light of express remedy of appeal being available under Order XLIII Rule 1A CPC. In support thereof, he would refer two Supreme Court judgments i.e. *Mohamed Ali vs. V. Jaya and others*⁹ and *Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others vs. Tuticorin Education Society and others*¹⁰. Even if the application is allowed, at best, it would establish the length of possession for longer period, which is insignificant unless the possession is established as adverse *qua* the true owners. In support, he would also read out to the findings of Ld. First Appellate Court as below:-

⁹(2022) 10 SCC 477

¹⁰(2019) 9 SCC 538

“xxxx xxxx xxxx xxxx
As the Ld. Court in *Shri Hari Dutt and others vs. Shri Sapuran Dass*, 1987(2) L.L.R. 554 held that mere possession howsoever long does not necessarily mean that it is adverse to true owner. It is one of the essential ingredient of adverse possession. So one of pre-requisite of claiming adverse possession is admitted ownership of another reason. In support of the view reference may be made to *Gurcharan Singh vs. Gram Panchayat, Gajral*, 2000(1) S.L.J. 587 a recent authority of our own Hon’ble High Court. In the present case in their written statement the contesting defendants have not admitted the ownership of the plaintiffs and on the contrary have pleaded that P.S.E.B. is owner of the property in dispute. In para 1 of the written statement, it is specifically pleaded by the contesting defendants that the plaintiffs as well as the proforma defendant are not owners of the property. It is, further pleaded that the property is the ownership of the PSEB, who is in possession of the same for the last more than 30 years. Since in their written statement, the contesting defendants have not admitted the plaintiffs to be owners and on the contrary pleaded their own ownership. As such, the question of adverse possession does not arise.
xxxxx xxxxx xxxxx xxxxx”

- 23.3. Further learned Senior counsel for plaintiff/respondents would submit that as the application under Order XLI Rule 27 CPC was rightly rejected by impugned orders passed by the learned First Appellate Court, the same do not require any interference on merits apart from the revision petitions being not maintainable.
- 23.4. Apart from above, he would urge that, in any case, State being a welfare entity cannot plead adverse possession. Reliance is on Supreme Court judgment rendered in Mukesh Kumar’s case *ibid*. Relevant part whereof is as under:-

“xxxx xxxx xxxx xxxx

Fifth Amendment of the US Constitution—a principle of a civilised society
37. Another important development in the protection of property rights was the Fifth Amendment. James Madison was the drafter and key supporter for the Fifth Amendment. The Fifth Amendment states: “nor shall private property be taken for public use, without just compensation”. The main issue is to pay just compensation for acquiring the property. There are primarily two situations when a landowner may obtain compensation for land officially transferred to or depreciated by the Government. First, an owner may be entitled to compensation when a governmental entity intentionally acquires private property through a formal condemnation proceeding and without the owner's consent. The State's power to take property is considered inherent through its eminent domain powers as a sovereign. Through the condemnation proceedings, the Government obtains the necessary interest in the land, and the Fifth

Amendment requires that the property owner be compensated for this loss.

38. The second situation requiring compensation under the Fifth Amendment occurs when the Government has not officially acquired private property through a formal condemnation proceeding, but “nonetheless takes property by physically invading or appropriating it”. Under this scenario, the property owner, at the point in which a “taking” has occurred, has the option of filing a claim against the government actor to recover just compensation for the loss. When the landowner sues the Government seeking compensation for a taking, it is considered an inverse condemnation proceeding, because the landowner and not the Government is bringing the cause of action.

39. We inherited this law of adverse possession from the British. Parliament may consider abolishing the law of adverse possession or at least amending and making substantial changes in the law in the larger public interest. The government instrumentalities—including the police—in the instant case have attempted to possess land adversely. This, in our opinion, is a testament to the absurdity of the law and a black mark upon the justice system's legitimacy. The Government should protect the property of a citizen—not steal it. And yet, as the law currently stands, they may do just that. If this law is to be retained, according to the wisdom of Parliament, then at least the law must require those who adversely possess land to compensate the title owners according to the prevalent market rate of the land or property in question. This alternative would provide some semblance of justice to those who have done nothing other than sitting on their rights for the statutory period, while allowing the adverse possessor to remain on property. While it may be indefensible to require all adverse possessors—some of whom may be poor—to pay market rates for the land they possess, perhaps some lesser amount would be realistic in most of the cases. Parliament may either fix a set range of rates or to leave it to the judiciary with the option of choosing from within a set range of rates so as to tailor the compensation to the equities of a given case.

40. Parliament must seriously consider at least to abolish “bad faith” adverse possession i.e. adverse possession achieved through intentional trespassing, actually believing it to be their own could receive title through adverse possession, sends a wrong signal to the society at large. Such a change would ensure that only those who had established attachments to the land through honest means would be entitled to legal relief.

41. In case, Parliament decides to retain the law of adverse possession, Parliament might simply require the adverse possession claimants to possess the property in question for a period of 30 to 50 years, rather than a mere 12. Such an extension would help to ensure that the successful claimants have lived on the land for generations, and are therefore less likely to be individually culpable for the trespass (although their forebears might). A longer statutory period would also decrease the frequency of adverse possession suits and ensure that only those claimants most intimately connected with the land acquire it, while only the most passive and unprotective owners lose title.

42. Reverting to the facts of this case, if the Police Department of the State with all its might is bent upon taking possession of any land or

building in a clandestine manner, then, perhaps no one would be able to effectively prevent them.

43. It is our bounden duty and obligation to ascertain the intention of Parliament while interpreting the law. Law and justice, more often than not, happily coincide, only rarely we find serious conflict. The archaic law of adverse possession is one such. A serious relook is absolutely imperative in the larger interest of the people.

44. Adverse possession allows a trespasser—a person guilty of a tort, or even a crime, in the eye of the law—to gain legal title to land which he has illegally possessed for 12 years. How 12 years of illegality can suddenly be converted to legal title is, logically and morally speaking, baffling. This outmoded law essentially asks the judiciary to place its stamp of approval upon conduct that the ordinary Indian citizen would find reprehensible. The doctrine of adverse possession has troubled a great many legal minds. We are clearly of the opinion that time has come for change.

45. If the protectors of law become the grabbers of the property (land and building), then, people will be left with no protection and there would be a total anarchy in the entire country. It is indeed a very disturbing and dangerous trend. In our considered view, it must be arrested without further loss of time in the larger public interest. No government department, public undertaking, and much less the Police Department should be permitted to perfect the title of the land or building by invoking the provisions of adverse possession and grab the property of its own citizens in the manner that has been done in this case.

46. In our considered view, there is an urgent need for a fresh look on the entire law on adverse possession. We recommend the Union of India to immediately consider and seriously deliberate either abolition of the law of adverse possession and in the alternate to make suitable amendments in the law of adverse possession. A copy of this judgment be sent to the Secretary, Ministry of Law and Justice, Department of Legal Affairs, Government of India for taking appropriate steps in accordance with law.

xxxx xxxx xxxx xxxx”(Emphasis supplied)

23.5. Arguments were also addressed on behalf of plaintiff/respondents by Mr. Kanwal Goyal, Advocate. He would also lay emphasis on appellants’ stand of denial of ownership of plaintiffs while claiming title by adverse possession. He would canvass that both the pleas are mutually destructive, and, therefore on that ground alone, appeal ought to be dismissed. As regards the ownership of plaintiffs/respondents being denied, he would point out to para 3 of Ld. trial Court’s judgment which states as under:-

“xxxx xxxx xxxx xxxx

3. Notice of this suit was issued to the defendants who appeared and contested the suit. In the written statement, the defendants alleged that plaintiffs are not owners of the property and the property is the ownership of defendant Board who had been in possession of the land more than 30 years. They denied that defendants are in illegal and unauthorized possession of the property in dispute. The defendants have, therefore, alleged that they are in possession of the property as owners and there is no question of handing over the possession to the plaintiffs. It is further alleged that possession of the defendants over the suit property is more than 30 years continuously which is open and notorious and as such the defendants have become the owners of the suit property by adverse possession. They contended that entries in the name of the plaintiffs regarding ownership in the jamabandi are wrong.

xxxx xxxx xxxx xxxx”

23.6. Mr. Goyal would argue that in view of the fact that in the written statement the ownership of plaintiffs has been denied, therefore, from their own conduct the appellants are estopped from taking the plea of adverse possession. Furthermore, he would point out to finding *qua* revenue entries rendered by Ld. First Appellate Court as below:-

“xxxx xxxx xxxx xxxx

7. The first point which falls for determination is whether the plaintiffs are owners of the suit property? While deciding issue No.1, the learned trial Court has held that the plaintiffs are owners of the property in dispute. The suit property is comprised in Khasra No.417(8-1). Ex.P3 is copy of Jamabandi for the year 1993-94 in respect of the above said khasra number and in this Jamabandi, the plaintiffs are recorded to be owners of the suit land. Ex.D2 to D8 are copies of Jamabandisin respect of the suit land produced by the defendant Board and even in these Jamabandis, the plaintiffs or their predecessors-in-interest are recorded to be owners of the suit land. In its written statement, the defendant Board has pleaded that the property in dispute is the ownership of P.S.E.B., but the defendants have not produced any documentary evidence regarding the ownership of the defendant Electricity Board. It is not the case of the defendants that the property in dispute was acquired by the Government for their use. From the entries contained in the above said Jamabandi it stands proved that plaintiffs are owners of the suit land. The finding of the Ld. Trial Court in this regard are correct and are hereby confirmed.

xxxx xxxx xxxx xxxx”

23.7. In the background of above finding, he would argue that merely because the possession of appellants is stated to be “Bila Lagan” in the jamabandi, the same does not make it as adverse. He would also rely on judgments rendered by this Court

in *Banta Singh vs. Hakam Singh*¹¹, relevant paras of which are reproduced herein below:-

“xxxx xxxx xxxx xxxx

7. The plea of adverse possession raised by the defendants-appellants runs counter to the plea that they were in possession under the agreement dated July 14, 1958. The Courts below rightly came to the conclusion that the defendants had failed to prove their adverse possession to the knowledge of the original owners. No particular date was mentioned from which they openly proclaim to be owners by adverse possession. The entries in the Jamabandi and Khasra Girdawaris that appellants are in possession without payment of rent will not prove their adverse possession. There is no entry that their possession was adverse (MUKHALFANA OR JABRAN). Earlier on similar facts case was considered by this Court in *Gurdeep Singh v. Rachhpal Singh*, 1993 (I) Simla Law Journal 341 wherein it was held that adverse possession was not proved on such entries. Mere non-payment of rent does not prove adverse possession. It was so held in *Karcha Singh v. Dewan Singh*, 1985 P.L.J. 237.

xxxx xxxx xxxx xxxx”

23.8. He would further rely upon Supreme Court judgment in *Union of India vs. Ibrahim Uddin and another*¹² to contend that once there are revenue entries for proof of title in favour of plaintiffs, adverse inference cannot be drawn against them.

23.9. He summed up his arguments by reading out contents of the replication. He urged that it has been clearly stated therein that plaintiffs were dispossessed somewhere in the year 1993. It was thus wrong to suggest that there are no pleadings to that effect. Replication being part of plaint, therefore, the pleadings of the plaintiffs are not lacking in material facts with regard to date of dispossession. He submits that replication being part of the pleadings has to be read conjointly with the plaint and it cannot be overlooked. *Qua* additional evidence, he would also argue that Order XLI Rule 27 CPC in any case permits the same only if it is relevant and advances a cause in any manner, which has to be pleaded. He would further submit that, in any case, even if the additional evidence is placed on record, at best, it would show that possession of the appellants is w.e.f. 1935-36 onwards instead of 1945 and,

¹¹1994 SCC OnLine P&H 274
¹²(2012) 8 Supreme Court Cases 148

that merely because of the longevity of possession the appellants cannot perfect their title, unless, of course, they establish in addition that the same was hostile to the knowledge of the plaintiffs. The defendants have failed to do so and, therefore, the appeal is liable to be dismissed.

Discussion

24. I shall now proceed to discuss the rival contentions and render my opinion thereupon by recording reasons in the succeeding paragraphs.

25. Before advertng to the rival claims, it would be pertinent to have a little peep into the evolution of the Electricity laws which for the first time were enacted during the British regime vide the Electricity Act, 1910. Subsequently, 1910 enactment was supplemented in the independent India vide The Electricity (Supply) Act, 1948 (*hereinafter referred to as '1948Act'*). The 1948 Act mandated setting up of State Electricity Boards by various State Governments to generate and supply the electricity within the territories of the respective States. Pursuant thereto, State of Punjab, under Section 5 of 1948 Act, constituted Punjab State Electricity Board w.e.f. 01.02.1959. Vide Gazette notification dated 30.01.1959 it also notified Punjab State Electricity Board Rules, 1959 which were framed as per powers conferred under Section 78 of 1948 Act. Thus, came into being the Punjab State Electricity Board. Prior to the constitution of the Electricity Boards and before independence, the electricity supply was being undertaken directly by the Department of Irrigation in coordination with the Department of Building and Roads.

25.1. All the tasks undertaken by the board are meant for the general public, and the officials responsible for providing these services are just doing their duty as public servants. Therefore, it is quite perplexing to see the claim/allegations of adverse possession ascribed to these public servants. It is difficult to understand and indeed puzzling as to why they would engage in such an act that goes against their

duty as public servants by taking over someone else's property, in which they have no personal interest.

25.2. As regards, suit land being gifted for betterment of society to get electricity supply in the locality, there is not a whisper about the said submissions either in the defendants' pleadings or an iota of evidence on record. Even if there may have been any such practice as submitted by Ms. Anu Chatrath, the learned Senior counsel, I am of the opinion that in absence of any foundation at all in the record about the said submission, it would not be proper for this Court to express any opinion on it by sheer guess, conjectures and surmises.

25.3. Reverting to record of the case, claim of plaintiff being in possession of suit land upto 1993 is a complete moonshine blowing in the wind with no proof whatsoever, other than self-serving oral deposition of power of attorney of plaintiffs.

25.4. Furthermore, it is unbelievable that the plaintiff wouldn't know about the *Bijli Ghar* on the land in question, especially since they rely on the revenue record entries which clearly state that on the suit land there is a *Bijli Ghar* of the Electricity Board/department. The plaintiff's claim that the defendant board and its representatives illegally occupied the property in 1994 is baseless since there are no details provided about who the officers were, whether the plaintiffs approached them, if any representations were made to their superiors, if any complaints were given to the police for such cognizable offences or alternatively, filed in a competent court, or if any departmental action was sought against the officials for occupying the plaintiffs' property. None of these actions were taken. No explanation at all is forthcoming on record or otherwise. It seems like the plaintiff's claim of their being dispossessed in 1993 is baseless for these glaring omissions. To my mind the failure to take any of such actions and provide any explanation for these omissions seriously dents the plaintiffs' claim that they were dispossessed in 1993 and 1994, whatever it maybe.

Accusing public servants of unlawfully seizing property seems to be nothing more

than baseless accusations without any substantial evidence. The plaintiffs' claim appears to have been conjured out of thin air without any credible foundation.

25.5. The plaintiffs' failure to lodge any written complaint, protest or representation with anyone in the government or local administration complaining that their property had been usurped or illegally taken possession of by the defendants/public officers is very significant and shows that their complete omission in this was deliberate for the fear of truth being then exposed. It is only as an after-thought, that all the fictitious facts were pleaded first time in replication.

26. Only cryptic averments have been made in the plaint, which are verbatim as under:

"1. That the plaintiffs are the owners of the property bearing khasra No. 417/8-1 boundaries given in the heading of the plaint, which is constructed one and the details of construction are given in the site plan Annexure A, situated near Bus Stand, Sangrur in equal shares. Annexure A site plan and copy of jamabandi are attached herewith.

2. That the defendants have got no right, title or concern with the property mentioned in the heading of the plaint i.e. roperty in dispute.

3. That the defendants in illegal, unauthorized possession of the above mentioned property."

Pertinent to note here that no date or year of dispossession, mode and manner thereof has been pleaded.

27. Obviously, the plaint as framed, shows and means that the plaintiffs' claim was that at the time of filing the suit, they were the owners of the suit property, the defendants had no right, title or concern with the property and they were in its illegal /unauthorized possession. That was the precise case required to be met in the written statement of the defendants. Overall perusal of the written statement shows a clear stand of the defendants that at the time of filing the suit, they were the owners of the suit property, having been in its adverse possession for over 30 years. This, to my mind, squarely met the plaintiffs' case pleaded in the plaint as reproduced above.

Absolutely nothing has been stated in the plaint as to when/how the plaintiffs became the owners and when/how they were dispossessed by the defendants. Had these things been pleaded in the plaint, then perhaps it could be urged that in their written statement, the defendants should have admitted the fact of plaintiffs' previous ownership and also specified the date/period of commencement of the defendants' adverse possession while claiming title by adverse possession.

28. I am thus of the view that the plaint itself did not provide any details on how or when the plaintiffs became the owners of the property or when and how they were dispossessed by the defendants. Had such details been stated in the plaint, the defendants would have then been required to respond to those specific allegations in their written statement. As it stands, the defendants' claim of ownership based on adverse possession appears to squarely meet the relevant positive but cryptic averments made in the plaint reproduced above.

29. Adverting now to merits of plaintiff's replication. It shows that in the year 1994, they got the possession of the rooms from the labour, who were sitting with their permission, but the defendants by breaking open the locks of those rooms, encroached upon the same and the old *Bijli Ghar* is actually in another adjoining khasra No. 416 but in the revenue record it has been wrongly shown located in disputed property (khasra No. 417). Paras 2, 8 and 9 of the judgment passed by the Learned trial Court show that in *jamabandis* Ex D-2 to Ex D-8 from 1965-66 to 1994-95, *jamabandi* Ex D-9 for 1953-54 and *jamabandi* Ex DW-3/A for 1945-46, the plaintiffs are shown to be the owners but the defendants are recorded in possession of the suit property. Plaintiffs who claim to be owners of the suit land, must have known, when they filed the suit, that in the entries in the these *jamabandis* for five long decades from 1945-46 to 1994-95, the old *Bijli Ghar* was shown located in suit property (khasra No. 417) and the defendants were recorded to be in its continuous.

29.1. In such a situation as aforesaid, to my mind, it was all the more necessary and incumbent upon the plaintiffs to state these material facts in the plaint itself. Further, it was incumbent upon them to state if they had taken any steps for getting the jamabandies entries from 1945-46 to 1994-95 corrected in so far therein the suit property was shown in the possession of the defendants and if no such steps had been taken, to explain their long inaction in that behalf. The plaintiffs had to stand on their own legs and plead the aforesaid necessary and material facts in the plaint itself. Still, not a word was stated about all this in the plaint. Having themselves failed in that, they cannot fall back on the averments made for the first time in their replication about the new and material facts introduced therein and, then lay blame at the door of the defendants and succeed on the ground that since in the written statement, the defendants did not admit the plaintiffs' previous ownership and specify the date/period of commencement their possession, they could not, therefore, claim title by adverse possession.

29.2. In *Anant Construction (P) Ltd.. vs. Ram Niwas*¹³, on the meaning, scope and purpose of Replication, Delhi High Court held as below:-

“24. To sum up:

(1) ‘replication’ and ‘rejoinder’ have well defined meanings. Replication is a pleading by plaintiff in answer to defendant's plea. ‘Rejoinder’ is a second pleading by defendant in answer to plaintiff's reply i.e. replication.

(2) To reach the avowed goal of expeditious disposal, all interlocutory applications are supposed to be disposed of soon on their filing. A delivery of copy of the I.A. to the counsel for opposite party is a notice of application. Reply, if any, may be filed in between, if the time gap was reasonable enough enabling reply being filed.

(3) I.As. which do not involve adjudication of substantive rights of parties and/or which do not require investigation or inquiry into facts are not supposed to be contested by filing written reply and certainly not by filing replication.

(4) A replication to written statement is not to be filed nor permitted to be filed ordinarily, much less in routine. A replication is permissible in three situations.

(i) when required by law;

¹³1994(31) DRJ (Delhi High Court)

(ii) when a counter claim is raised or set off is pleaded by defendant

(iii) when the court directs or permits a replication being filed.

(5) Court would direct or permit replication being filed when having scrutinised plaint and written statement the need of plaintiff joining specific pleading to a case specifically and newly raised in written statement is felt. Such a need arises for the plaintiff introducing a plea by way of 'confession and avoidance.'

(6) A plaintiff seeking leave of the court has to present before it the proposed replication. On applying its mind the court may grant or refuse the leave.

(7) A mere denial of defendant's case by plaintiff needs no replication. The plaintiff can rely on rule of implied or assumed traverse and joinder of issue.

(8) Subsequent pleadings are not substitute for amendment in original pleadings.

(9) A plea inconsistent with the pleas taken in original pleadings cannot be permitted to be taken in subsequent pleadings.

(10) A plea which is foundation of plaintiff's case or essentially a part of causes of action of plaintiff, in absence whereof the suit will be liable to be dismissed or the plaint liable to be rejected cannot be introduced for the first time by way of replication. Appreciation is placed on record of useful assistance rendered by Shri Ishwar Sahai Sr Advocate and Ms Ritu Bhalla advocate both from civil side of High Court Bar who brought to the notice of the court quite a few aspects relevant to the issues at hand."

29.3. I am in respectful agreement with the above view. The judgment *ibid* is applicable to the instant case. A plea which is the foundation of plaintiff's case or essentially a part of causes of action of plaintiff, in the absence whereof the suit will be liable to be dismissed or the plaint liable to be rejected, cannot be introduced for the first time by way of replication. Aforesaid material facts not stated in the plaint, but newly introduced in the plaintiffs' replication are, therefore, liable to be ignored in the present case.

30. The afterthought of the plaintiffs is also proved by the fact that prior to plaint, no written complaint or representation was made to anyone in the government or local administration complaining about their property being usurped or illegally taken possession of by public officers.

31. As an upshot of discussion above, it is held that the plaintiffs failed to plead necessary and material facts in the plaint itself, specifically regarding the entries in the jamabandis from 1945-46 to 1994-95. Their failure to take steps to have them corrected is pointer that they were out of possession way before 1993, right from 1945 onwards. Facts of mode and manner of being dispossessed pleaded in the replication are an afterthought. That is why these were not pleaded in the plaint and were only mentioned in the plaintiffs' replication, which is not considered an appropriate place for introducing essential aspects of the cause of action. At the cost of repetition, it is held that introduction of a plea that forms the basis of the plaintiff's case or a significant aspect of their cause of action cannot be raised for the first time in the replication. In the case in hand, to that extent, the facts presented in the replication must be disregarded, and the case should be evaluated based on the initial pleadings in the plaint and the written statement.

32. In the light of aforesaid, let us now examine the facts of case in hand viz-a-viz the evidence on record. The disputed property, situated in Sangrur, comprises of khasra No. 417 (8-1). *Fard Intkhab (Jamabandi)* Ex D-2 of year 1965-66, Ex D-3 for 1969-70, Ex D-4 for 1974-75, Ex D-5 for 1979-80, Ex D-6 for 1984-85, Ex D-7 for 1989-90, Ex D-8(also Ex P-3) for 1994-95 show a *gair mumkin bijlighar* (power house) of Electricity Department located in khasra No. 417 (8-1). Prem Chand DW-2, Fireman (retired) was examined on 18.02.1999 and he deposed that he had been appointed in the PSEB in 1957 and retired in 1996. He deposed that disputed property comprises of one ME Sub Division, a complaint centre, four residential houses and a workshop. He stated that he himself was initially appointed in the said complaint centre and the building was/is 80 years old; existed there way before 1957 i.e. he had seen it since the very time of his appointment. He had been seeing the complaint centre in the disputed property all throughout and that the consumers of the Board used to lodge their complaints in this complaint centre. That apart, there is a

very old power house, ME office and a garage built in the disputed property. Ranjit Singh, DW-3 aged 67 years was examined on 09.08.1999 and deposed that during the regime of Maharaja of Jind (at Sangrur), in the suit property there was a power house and staff quarters as well a complaint centre, meter testing laboratory as well as a store of the Junior Engg. of the PSEB. He had been seeing the possession of the Board on the suit property since the days of his discretion continuously without interruption and that he had remained patwari at Sangrur in 1982 and again in 1988. He referred to *Jamabandi* of the year 1945-46 (in Urdu) Ex DW-3/A of the suit property and deposed that he had prepared its translation (in Punjabi) Ex DW-3/B which showed that the possession was of the Government Department having a *Bijli Ghar* therein. The aforesaid testimony of DW-2 Prem Chand and DW-3 Ranjit Singh based on their direct personal knowledge remained unshaken in cross examination. Pawan Kumar, DW4, Assistant Engineer, City Sub Division, PSEB, Sangrur also deposed that in the disputed property, there are quarters (residential), a complaints centre, meter laboratory and other offices of the PSEB, including the old power house. He also deposed that the Board is in continuous possession of the disputed property for more than 60 years. DW5 Ashok Kumar Revenue Patwari produced copy of Field Book entry Ex DW-5/A and deposed that therein the suit property is shown “*Gair Mumkin Bijli Ghar Makbuza Bijli Ghar*”.

32.1. As against the evidence above, the plaintiffs’ case pleaded in the replication is that in the year 1994, they got the possession of the rooms from the labour, who were sitting with their permission. None out of those labourers has been even named, let alone examined, to support this story. In the replication, it is also the stand of the plaintiffs that entries in *jamabandis* showing the possession (of the defendants) over the suit land are wrong; khasra No. 416, which is adjoining the disputed property, was ownership and in possession of the defendants, in which there was and is an old *Bijli Ghar*. However, in the column of possession, the defendants’

possession of *Bijli Ghar* has been wrongly shown in khasra No. 417 (the disputed property).

32.2. Based on the evidence presented, it is borne out that the disputed property is located in khasra No. 417 (8-1) upon which there exist a *gair mumkin bijli ghar* (power house) of the Electricity Department, as well as other offices and residential quarters of the Punjab State Electricity Board (PSEB). The evidence includes *Fard Intkhab* and other revenue records from 1945-46, testimony of witnesses including a retired fireman, a former *patwari*, and an assistant engineer, as well as a field book entry. The witnesses stated that the PSEB has been in continuous possession of the disputed property for more than 60 years, and that the power house and other PSEB offices have been located there for several decades. Their testimony/evidence seems to be consistent and has not been shaken during cross examination. Aforesaid voluminous oral and documentary evidence shows the continuous possession of the PSEB over the suit property since 1945. Basis thereof, I have no hesitation in making final determination that property has been all through in possession of defendants – PSEB since 1945 and not 1994 as pleaded by plaintiff.

32.3. The two plaintiffs claim that they and proforma defendant No. 3 are the owners of the suit property. None out of them personally appeared as a witness. Gurpartap Singh Kairon PW-4 is the son and power of attorney of plaintiff No. 2. No doubt, he deposed that the disputed property (khasra No. 417) is bounded on the western side by a street and the old *Bijli Ghar*, meaning that the *Bijli Ghar* is not located in the disputed property, but is in the adjoining property bearing khasra No. 416. In my opinion, this self-serving bald statement of PW-4 is far outweighed by the consistent and continuing entries starting from *jamabandi* 1945-46 (in Urdu) Ex DW-3/A (also Ex DW-3/B in Punjabi), *Fard Intkhab* Ex D-2 for 1965-66, Ex D-3 for 1969-70, Ex D-4 for 1974-75, Ex D-5 for 1979-80, Ex D-6 for 1984-85, Ex D-7 for 1989-90, Ex D-8(also Ex P-3) for 1994-95 all showing that a *gair mumkin bijli*

ghar (power house) of Electricity Department is located in khasra No. 417(suit property). Accordingly, it is so held that the *gair mumkin bijli ghar*(power house) of Electricity Department is actually located in khasra No. 417 which is the disputed property and not in the adjoining property bearing khasra No. 416 .

33. Thus, the existence of the *gair mumkin bijli ghar* (power house) of Electricity Department in the disputed property (khasra No. 417) at least since 1945-46 is established on record.

34. There is another aspect to the existence of construction. Pucca foundations and platforms are necessarily required to be erected for fixing the tall and large sized towers and other installations of the power house. These are permanently fastened to the land. Obviously, the construction of pucca foundations and platforms, fixing the tall and large sized towers and other installations of the power house, permanently fastened to the disputed land in khasra No. 417 for making the power house functional had been carried out/completed at least in 1945-46, if not earlier. In their replication, the plaintiffs admitted the existence of an old *Bijli Ghar* on the spot, but pleaded that the same was actually located in the land bearing khasra No. 416 owned by the defendants which is adjoining the disputed land, but was wrongly shown in the revenue record to be in khasra No. 417 (the suit property). This version of the plaintiffs is belied by the evidence on record. I have already held above that the *gair mumkin bijli ghar* (power house) of Electricity Department is actually located in khasra No. 417 which is the disputed property and not in khasra No. 416.

35. To sum up, based on the evidence presented on the record, it appears that the plaintiffs' claim of ownership over the suit property is not supported by sufficient evidence. The plaintiffs' assertion that they obtained possession of the rooms in 1994 from their so called unnamed labourers who were sitting there with their permission is not acceptable for the reasons stated earlier. Additionally, the plaintiffs' claim that

the entries in the *jamabandis* showing the possession of the defendants over the suit land are wrong is contradicted by consistent and continuing entries in the revenue record since 1945-46 showing the location of a *gair mumkin bijli ghar* (power house) of the Electricity Department in the disputed property (khasra No. 417).

36. It is incomprehensible that plaintiffs did not know about such pucca construction and installations of the power house existing in the disputed property at least since 1945-46 which are permanent in nature. Such construction/installations are visible to anybody visiting or passing by that area even from considerable distance. These constructions/installations of PSEB thus show the defendants' hostile, notorious and continuous possession over the suit land underneath, adverse to the knowledge of the plaintiffs since 1945-46, if not earlier. It is held accordingly.

37. Furthermore, the existence of pucca construction and installations for the power house in the disputed property since at least 1945-46 indicates the hostile, notorious, and continuous possession of the defendants over the suit land, adverse to the knowledge of the plaintiffs. Thus, based on the evidence presented, it is held that the defendants have established their continuous adverse possession over the disputed property since 1945-46 extinguishing the plaintiffs' right to the suit property and that the plaintiffs' claim of its ownership at the time of filing the suit is not proved on record.

38. The courts below discarded the evidence, which *inter-alia* also included photographs exhibited by defendants, showing existence of the construction on the flimsy ground that year of construction and/or the building plans and other requisite sanctions to construct were not produced by defendants. Clearly, both courts fell in grave error as the physical existence of the construction since 1945 as per revenue entries and testimonies of public officials as mentioned above could not have been given such a short shrift.

39. Adverting briefly to the case law as cited in *Utha Moidu Haji's case (supra)* & *Joginder Kaur's case (supra)* by the learned counsel for the plaintiffs, these judgments do not seem applicable in the facts and circumstances of the instant case.

39.1. In *Mukesh Kumar's case* supra, cited by the learned counsel for plaintiffs, the Apex Court no doubt criticized the action of the State and its instrumentalities to possess land adversely and acquire its ownership by adverse possession but also noted that yet, as the law currently stands, they may do just that. However, on its own the Court stopped short of laying down any prohibition against the same, opining that there is urgent need for a fresh look on the entire law on adverse possession. Having thus opined, the Court only recommended the Union of India to immediately consider and seriously deliberate either abolition of the law of adverse possession and in the alternate to make suitable amendments in the law of adverse possession. At the same time, the Court held in judgment *ibid* that the Government itself may acquire land by adverse possession and that fairness dictates and demands that if the Government can acquire title to private land through adverse possession, it should be able to lose title under the same circumstances. The settled legal position thus seems to be that as the law stands at present, the State and its instrumentalities can also possess land adversely and acquire its ownership by adverse possession.

39.2. I have held above with reference to the pleadings, documentary and oral evidence on record that the hostile, notorious and continuous possession of the defendants over the disputed land adverse to the knowledge of the plaintiffs since 1945-46, if not earlier, stands established. Under section 27 read with article 65 of the schedule to the Limitation Act, at the determination of period of 12 years from the possession of the defendant becoming adverse to the plaintiff, the latter's right to such property shall be extinguished. It follows thus that on expiry of 12 years from

commencement of the defendants' adverse possession (in 1945-46) of the suit land, the plaintiffs' right thereto stood extinguished, they ceased to be its owners and the defendants had become the owners by adverse possession.

40. In *Ibrahim Uddin's case (supra)*, cited by learned counsel for plaintiffs it was held that all pros and cons must be examined before the adverse inference is drawn. In present case, the consistent entries in the revenue record themselves show the long possession of the defendants. The rebuttable presumption of correctness of *Jamabandi* entries in the revenue record showing the plaintiffs' ownership has been found displaced and the defendants' adverse possession since 1945-45 has been established on record as stated above. Mere continuance of the plaintiffs' names in the revenue record as owners does not negate the fact of defendants' actual adverse possession since 1945-46 proved on record. It is not a case of otherwise drawing any adverse inference against the plaintiffs about the defendants' adverse possession since 1945-46.

41. In the instant case, adverse possession of the defendants since 1945-46 has been proved on the basis of overall record as mentioned above and not merely because the possession of appellants is stated to be "*Bila Lagan*" in the *jamabandi*. The judgment rendered by this Court in **Banta Singh's case** *ibid* relied upon by the learned counsel for the plaintiff is not, therefore, attracted herein.

42. I may hasten to add there that there is no absolute prohibition in law barring this Court from reversing the concurrent findings of two courts by re-appreciation of the evidence, as was canvassed by learned senior for the respondents. Yes, it is generally correct that exercising second appellate court jurisdiction this court should be wary in showing indulgence and observe the legal parameters as per section 100 of CPC. The Appellate Courts should and do give deference to the findings of fact recorded by a trial judge, but in appropriate cases, surely can and should also review them *de novo*. Meaning, that, if necessary, this court can also make an

independent determination while taking into consideration, of course, by giving due deference to the findings of fact recorded by the learned trial court and/or the first Appellate Court. This court is generally hesitant to overturn the factual findings of trial courts upheld by first appellate court, as the trial Court had the benefit/opportunity to observe the demeanour of the witnesses while recording evidence during the trial. In second appeal, the court should intervene only if the findings are clearly erroneous, meaning that they are not supported by the evidence presented or if the trial judge misunderstood or overlooked important evidence. The trial judge is in the best position to evaluate the credibility of witnesses and weigh the evidence presented at trial. As long as the decision of both courts below reflects that they independently evaluated the evidence and made a reasoned decision based on that evidence, this court in second appeal will generally defer to that decision and not disturb it unless it is clearly erroneous or otherwise legally flawed. As already held by me, in this case, both courts below committed manifest error in law in recording the findings of facts against the appellants by mis-appreciating the evidence on record. Hence the interference by this court.

43. In the aforesaid context, reference may also be had to *Ibrahim Uddin's case (supra)*, wherein it is held that there is no prohibition to entertain a second appeal even on question of fact provided the court is satisfied that the findings of the courts below were vitiated by non-consideration of relevant evidence or by showing erroneous approach to the matter and the findings recorded by the courts below are perverse.

Conclusion

44. In the light of documentary and oral evidence referred to above and the foregoing discussion, I am of the opinion that in this case the Ld. Courts below misconstrued the pleadings and ignored material evidence, as elaborated above, to wrongly hold that at the time of filing the suit the plaintiffs were the owners of the

suit land and also that the defendants had failed to prove that they had become its owners by adverse possession and on that basis decided issues No. 1 and 2 in favour of the plaintiffs and against defendants. To my mind, these findings recorded by the Ld. Courts below are based on misreading of the plaint, written statement and replication and vitiated by non-consideration and misconstruction of relevant evidence, by erroneous approach to the matter and are thus perverse and, therefore, liable to set aside. Accordingly, it is held that on the expiry of 12 years from commencement of the defendants' adverse possession (in 1945-46) of the suit land, the plaintiffs' right thereto stood extinguished, they ceased to be its owners and the defendants became the owners by adverse possession. As a result, the findings on issues No. 1 and 2 in favour of the plaintiffs and against the defendants recorded by the learned courts below are reversed and both these issues are decided in favour of the defendants and against the plaintiffs.

Civil Revisions are now taken up.

45. Civil Revision No.1062 of 2001

(Assailing order dated 26.02.2001 for the dismissal of appellant's application under Order 41 Rule 27 CPC)

Para 2 of the application dated 03.01.2001 which had been moved before and dismissed by the learned first Appellate Court is as under:-

"2. That the appellant have taken the plea of adverse possession in the written statement. The Board and its predecessor is in possession of the suit land even prior to 1935-36 and the appellant and its predecessor is using the property as owner since 1936 to the knowledge of the respondents and their predecessors. During this period the appellant got water connection, sewerage connection, telephone connection, house tax is also being paid by the PSEB since 1980-81 and even prior to that Jamabandi for the year 1937-38 shows the possession of the PSEB even prior to 1937-38. The appellant could not produce these documents in the trial Court inspite of due diligence. The Municipal Committee, Sangrur issued letter which shows on which date water connection were obtained in the property in dispute. The letter No.82 dated 3.5.2000, letter no.3599/HT dated 3.5.2000, letter no.Spl 1 dated 21.12.2000 and notice u/s 67 of the Pb. Municipal Act/House Tax record 1980-81, 1964-65 and Jamabandi for the year 1937-38 besides KhasraGirdawari are very essential documents for the just decision of the case as all these

documents will help the Hon'our Court to prove the continuous, open and xxx(not legible) style possession of the appellant over the suit land."

45.1. Learned Senior counsel for petitioner argued in terms of the case pleaded in petition bearing CR No.1062 of 2001 that the appellant-board and its predecessor were/are in possession of the suit land even prior to 1935-36. For this period, appellant has got documentary proof of revenue record viz. *Jamabandi* for the year 1937-38, which shows possession of PSEB even prior to 1937-38. That apart documentary proof *qua* water connection, sewerage connection, telephone connection and house tax being paid by PSEB since 1980-81 was also sought to be adduced in evidence before the first appellant court. He would point out that following documentary evidence was sought to be placed on record of the first appellate court :-

i). *Jamabandi* for the year 1937-38

ii). *Khasra Girdawari* of year 1937-38.

iii). Notice u/s 67 of Punjab Municipal Act, 1911 *qua* assessment of house tax and House Tax assessment record of 1964-65 and 1980-81

iv). Letter by The Municipal Committee, Sangrur – showing the date of water connection obtained by PSEB in the property in dispute.

v). Following Letters by Executive officer of Municipal committee :-

a). Letter No.82 dated 03.05.2000

b). Letter no.3599/HT dated 03.05.2000

c). Letter no.Spl/1 dated 21.12.2000

45.2. It was contended that appellant could not produce these documents in the trial Court in-spite of due diligence. However, they are/were very essential for the just decision of the case. All these documents will help the Court to prove the continuous, open and hostile possession of the appellant over the suit land. Notwithstanding, vide order dated 09.02.2001, learned first appellate court dismissed defendants/appellants application to produce these documents.

45.3. I have perused the impugned order. The learned Additional District Judge observed that these documents are old ones, were in existence when the

defendants led evidence in the trial court and they could have produced the same at that stage. Their application did not disclose any sufficient cause for not producing these documents in the trial court.

45.4. I am also inclined to agree with aforesaid view of Ld. First Appellate Court, except the observation that documents being pre-existent ought to have been produced earlier. Existence would not necessarily mean possession thereof. Some of the documents being very old (revenue record is of 1937-38 from British times), naturally it took time for the petitioner (defendant) to identify them and arrange to get them from different offices. It is not as if they were in possession of the petitioner Board and yet it did not produce the same.

45.5. I may though hasten to add here that a look at the documents, proposed to be produced, does reveal that the same are though relevant, but the production thereof would not change or improve the stand of the appellants. In the premise, same do not thus seem necessary to enable this court to pronounce judgment and/or likely to result in any different conclusion.

45.6. Apart from above, allowing the production of these documents, at this belated stage, would result in remanding the matter for further rebuttal evidence of plaintiffs as they have a right rebuttal and also to object to their admissibility. Of course, arguments would be that some of the documents being certified copies do not have to be proved as they are *per se* admissible. Be that as it may, remand of the case after 26 years of filing of the suit would be quite a travesty of justice. In the overall premise, the petition is, therefore, liable to be dismissed.

46. Civil Revision No.1063 of 2001

The grievance is against an order dated 09.02.2001 passed by first appellate court dismissing the defendants (appellant-PSEB) application to amend the written statement. Reasons assigned by the court below, *inter alia*, are that defendants had already taken the plea of adverse possession in the written statement; a specific issue

regarding the adverse possession was framed; both parties led evidence and issue regarding adverse possession had been decided by the learned trial Court and that since the plea of adverse possession was already there in the written statement, as such the proposed amendment was not necessary for the just decision of the case.

46.1. Learned senior counsel for the plaintiff/respondents raised a preliminary objection *qua* maintainability of the revision petition asserting that Order XLIII Rule 1-A of CPC gives a right to the aggrieved party to challenge a non-appealable order in the main appeal against the decree passed against such party by contending that such order should not have been made and the judgment should not have been pronounced.

46.2. The argument is that as the defendants could have challenged the impugned order under revision, in the appeal since filed by them against the main judgment and decree, this provision bars the remedy of Revision against the impugned non-appealable order.

46.3. To my mind, aforesaid contention is untenable. Legal remedy of Revision against the impugned non-appealable order is precedent to and independent of the remedy under Order XLIII Rule 1A of CPC to challenge a non-appealable order in the main appeal against the decree passed against such party. This prior and independent legal remedy of Revision against the impugned non-appealable order was/is not taken away or barred merely because the party aggrieved could also challenge the impugned non-appealable order in the main appeal against the decree.

46.4. In its order impugned herein, learned First Appellate Court, *inter alia*, observed, as under:

“xxxx xxxx xxxx xxxx

The defendant-appellants have already taken the plea of adverse possession in their written statement. A specific issue regarding adverse possession was framed. Both the parties led evidence and issue regarding adverse possession has been decided by the learned trial Court. Since the plea of adverse possession is already there in the written statement as such the proposed amendment is not necessary for the just decision of the case. Consequently, the application under consideration is hereby dismissed.

xxxx xxxx xxxx xxxx”

46.5. On perusal of the record, on merits, I am inclined to hold that the learned First Appellate Court rightly rejected the application for amendment of the written statement moved at the appellate stage by recording sound and sufficient reasons in consonance with record and the applicable law. There seems no reason to interfere with the same in exercise of the Revisional jurisdiction of this Court. Accordingly the petition is liable to be dismissed.

47. CM No. 1462-C of 2001 in the RSA herein

This has been moved by the defendants (appellants herein) for permission to produce, as additional evidence, in the instant second appeal, a letter dated 23.09.1994 written by Pushpinder Kaur plaintiff, to the Administrative Member of the then Punjab State Electricity Board (PSEB). She has stated therein that the suit property was in possession of the PSEB since 1929 and no rent was being paid. Its non-production earlier is sought to be explained by stating that the said letter was directly addressed to the Administrative Member of the PSEB and not to the PSEB through the Administrative Member; and it was only during the execution proceedings that this letter came to the knowledge of the defendants. Undisputedly, the letter in question was throughout in the possession of the defendants and the ostensible reason given for its non production during trial or before the learned First Appellate Court does not seem sound and acceptable. In any case, even if relevant, as was canvassed, production thereof, at this stage, would not change or improve the stand of the appellants. In the premise, this Court does not require the production of this document to enable it to pronounce judgment or otherwise for any other substantial

cause. As a result, CM No. 1462-C/2001is also liable to be dismissed. Ordered accordingly.

Relief

48. As an upshot of the foregoing discussion, CR No.1063 of 2001 (O&M), CR No.1062 of 2001 (O&M) and CM No. 1462-C/200 in RSA 693 O&M)/2001 are dismissed. The regular second appeal bearing RSA No. 693 of 2001 is allowed. The impugned judgment and decree dated 16.11.1999 passed by learned trial Court as also the impugned judgment and decree dated 09.02.2001 passed by learned First Appellate Court are set aside. Resultantly, the suit of plaintiffs is dismissed.

49. Pending application/s, if any, shall also stand disposed of.

50. No order as to costs.

(ARUN MONGA)
JUDGE

May 15, 2023
ashish

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No