

**IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH****117****RSA-158-2025 (O&M)****Date of decision: 24.02.2025****Jaspal Kaur and others****...Appellant(s)****Vs.****Gaushala Rama Mandi and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Mr. Satbir Singh Gill, Advocate for the appellants.***********NIDHI GUPTA, J.**

The defendants No. 4, 8, 9 and 10 (through legal heirs) and 11 (appellants No. 1 to 5 herein respectively) are in second appeal against the concurrent judgments and decrees of the Id. Courts below, whereby the suit of the plaintiff/respondent no.1 herein, for possession of the suit land comprised in khewat No.856 measuring 3 kanals 12 marlas and in khewat No. 857 measuring 80 kanals 16 marlas vide jamabandi for the year 2012-13; along with consequential relief of permanent injunction restraining the defendants from raising construction over the suit land and changing the nature of suit land, has been decreed by both the Courts below.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellants are the 'defendants No. 4,8,9,10 (through legal heirs) and 11'; and the respondent No.1 is the 'plaintiff'.



3. The brief facts of the case as set out in the plaint are that the plaintiff filed the present suit for possession regarding the land comprised in khewat no. 856, khata no. 1674, kittas 2, area measuring 3 kanal 12 marla and in khewat no. 857, khata no. 1675 to 1678, kittas 15, area measuring 80 kanal 16 marla vide fard jamabandi for the year 2012-13, situated at village Kalanwali, Tehsil Kalanwali, District Sirsa (***hereinafter referred to as suit land***) along-with consequential relief of permanent injunction thereby restraining the defendants from raising constructions over the suit land and also from changing the nature of the suit land forcibly and illegally. The plaintiff is authorized member of the Gaushalla, Raman Mandi. The plaintiff is owner of the suit land over which the defendants have made unauthorized possession/encroachment for last 3-4 years without any right. The plaintiff being owner of the suit land is entitled to get the possession of the same from the defendants. Hence, the present suit.

4. Upon notice, defendants No. 1 to 3 failed to appear and were accordingly proceeded ex parte vide orders dated 18.07.2019 and 02.11.2018.

5. Upon notice, defendants No. 4 to 12 appeared and filed joint written statement resisting the suit on various grounds *inter alia* submitting that plaintiff is not owner of the suit land; its name is wrongly mentioned in the column of ownership in the revenue record; revenue record is liable to be corrected in favour of answering defendants. Predecessor in interest of the defendants were cultivating the suit land from the time of consolidation prior to 1960-61; thereafter the defendants are cultivating the suit land in



the same capacity, as duly recorded in khasra girdawari; possession of the defendants over the suit land is from the time of predecessor in interest which was more than 12 years without any interruption, open and peaceful, therefore the defendants have become owners of the suit land.

6. Replication was filed by the plaintiff.

7. On the basis of the pleadings of the parties, following issues were framed vide order dated 25.09.2019:-

- 1. Whether the plaintiff is entitled to seek possession of the suit land? OPP*
- 2. Whether the plaintiff is also entitled to relief of permanent injunction, as prayed for? OPP*
- 3. Whether the suit of plaintiff is not maintainable in the present form? OPD*
- 4. Whether the plaintiff has no locus standi and no cause of action to file the present suit? OPD*
- 5. Relief.*

8. Upon appraisal of the pleadings and the evidence led by the parties, the Id. trial Court decided issues No. 1 and 2 in favour of the plaintiff and against the defendants; issues No. 3 and 4 were to be proven by the defendants but no evidence was adduced by the defendants on these issues; and accordingly the suit of the plaintiff was decreed with costs by the learned trial court vide judgment and decree dated 30.01.2023.

The defendants were directed to handover the possession of the suit land to the plaintiff within three months from the date of the judgment. Further, defendants were restrained from changing the nature of the suit land and also from raising any construction over the same. The trial court further



directed that the revenue record was also liable to be corrected after delivery of possession of the suit land to the plaintiff.

9. The appeal filed by the defendants/present appellants was dismissed with costs by the learned Additional District Judge, Sirsa vide judgment and decree dated 11.12.2024 thereby affirming the findings of the learned trial Court. Hence, the present second appeal.

10. Learned counsel for the defendants/appellants herein *inter alia* submits that the learned Courts below are in patent error in decreeing the suit of the plaintiff and the same are liable to be set aside as it is the admitted case of the plaintiff that it became owner of the suit land by way of sale deed dated 03.06.1968; whereas, defendants are proven to be in possession of the suit land since prior to 03.06.1968. Even as per the report of Halqa Patwari Ex.P4, it is clear that defendants were in possession of the suit land prior to the date when the plaintiff became owner on 03.06.1968. It is submitted that therefore, it is well proven on record that the defendants are in hostile possession of the suit land for more than statutory period of 12 years and that the said possession is continuous and open. Even as per the jamabandi for the years 1973-74 (Annexure A-4) the defendants are recorded in column of cultivator; and as per jamabandi for the year 1998-99 Ex.D2, the defendants are shown to be in possession. In fact as per the testimony of PW2 himself (Annexure A-2), it is shown that defendants' possession over the suit property was hostile.

11. The plaintiff is claiming that 3-4 years back, the defendants had had made unauthorized possession/encroachment over the suit land



however perusal of the testimony of plaintiff's witnesses and documentary evidence adduced by the plaintiff himself shows that the defendants have been in possession since prior to the date when the plaintiff became owner of the suit land. PW2 in his cross-examination has totally feigned ignorance regarding Ex.D1 and D2 which is jamabandis for the years 1973-74 (Annexure A-4) and 1988 and 1989 respectively in which names of the predecessors of the defendants have been recorded in the column of cultivation as Gair Marusi. It is submitted that therefore the plea of the defendants with regard to their ownership over the suit property by way of adverse possession has been well proved on record. It is contended that the plaintiff has taken the plea that it came to know regarding the defendants' alleged unauthorized possession of the suit land only about 3-4 years back, is only to bring the suit within limitation. The defendants have consistently denied the ownership of the plaintiff over the suit land on account of their adverse possession and on this basis, defendants had claimed that they have become the owners of the suit land which stands duly proven on record. In fact, possession of the defendants of the suit land is not permissive possession rather it is hostile.

12. It is accordingly prayed that the present appeal be allowed; and impugned judgments and decrees be set aside.

13. No other argument is raised on behalf of the appellants/defendants.

14. I have heard learned counsel for the appellants/ defendants and perused the case file in great detail.



15. It has been argued by learned counsel for the appellants/defendants that the defendants are in possession of the suit land prior to the plaintiff; and that their possession over the suit land was adverse. However, it is the finding of the learned Courts below that the plaintiff had produced certified copies of Jamabandi (Ex.P1) and Jamabandi (Ex.P9) for the years 2012-13 and 2017-18 respectively as per which the name of the plaintiff is recorded in the column of ownership. No contrary evidence was led by the defendants to rebut the same. The reliance placed by the defendants upon the revenue record Annexure A-7 is misplaced, as admittedly the same are not related to the suit land.

16. Further, the defendants are claiming ownership over the suit land on the basis of adverse possession. It has been pleaded by the defendants that they are in cultivating possession of the suit land from the time of their fore-fathers; however no evidence was brought on record by the defendants to indicate as to when the said possession became adverse. It is established position in law that mere long possession is not sufficient to establish plea of adverse possession. Admittedly, there is not even smidgen of evidence in favour of the defendants to establish that they are in 'adverse possession' for a period of more than 12 years. In fact no evidence has been led by the defendants to prove their claim over the suit land. Even no particular date is mentioned as to when the alleged adverse possession of the defendants has actually commenced upon the suit land. No doubt, the fore-fathers of the defendants were in permissive possession of the suit



land. However mere possession for long time does not result in converting the permissive possession into adverse possession. The defendants had by their own admission in the written statement merely pleaded that they are in cultivating possession of the suit land from the time of their fore-fathers. However, there is no evidence to indicate as to when the said possession became adverse; and therefore, mere long possession was not sufficient to establish plea of adverse possession for a period of more than 12 years.

17. It is also relevant that the defendants in their written statement have denied the ownership of the plaintiff over the suit property. However it is established position in law that for raising the plea of adverse possession, it is necessary for the other party (in the present case the appellants/defendants) to admit the title of the other party (in the present case the plaintiff). As such, the defendants were required to admit the title of the suit property in favour of the plaintiff. However, they have failed to do so. Even otherwise, as per jamabandis on record, the ownership of the plaintiff over the suit land stood proven. In any event, there is no issue/dispute in respect of the ownership of the suit land.

18. The relevant findings of the learned first Appellate Court regarding limitation as contained in the judgment dated 11.12.2024, are reproduced as under:-

“30. The other plea of the defendants that the suit as filed by the plaintiff is barred by limitation is also without any merits because it is settled law that if the defendant wants to defeat the right of plaintiff, must establish his adverse possession for over 12 years which has the effect of extinguishing the title of



the owner by the operation of Section 28 of the Limitation Act read with Article 144 and if he fails to do so, there is no reason for non suiting the plaintiff merely because he was not able to prove possession within 12 years. In the present case also since the defendants have failed to prove their plea of adverse possession, the suit of the plaintiff cannot be said to be barred by limitation.”

19. Keeping in view the above undisputed facts, the present regular second appeal is hereby **dismissed**.

20. Pending applications, if any, stand disposed of.

24.02.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

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