



(101)

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

RSA-1919-1990 (O&M)

Reserved on:- 06.08.2025

Pronounced on:- 20th August, 2025

Jaffar alias Japhara (since deceased) through his LR Rujadar and another.

...Appellant(s)

Versus

Rehmat (since deceased) through his LR Nashru and others.

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. Rajinder Goel, Advocate,
for the appellants.

Mr. Abhimanyu Singh, Advocate,
Mr. Rajinder Singh, Advocate,
for the respondents.

* * * *

VIRINDER AGGARWAL, J.

1. Appellant-defendant No. 1 filed the present appeal against judgement and decree dated 05.05.1990 passed by learned Additional District Judge, Gurgaon vide which judgement and decree dated 05.08.1989 passed by learned Sub Judge, 1st Class, Gurgaon was set aside and suit of respondent-plaintiff for declaration and permanent injunction was decreed and the respondent-plaintiff was held to be owner in possession of the suit land and revenue entries showing the plaintiff as mortgagee instead of owner were held to be wrong and defendants were restrained from forcibly taking possession over the suit property.

2. Briefly, the respondent-plaintiff filed suit for declaration and permanent injunction claiming himself to be owner in possession of the suit

land measuring 11 kanals 07 marlas situated in the revenue estate of Dundaheri, Tehsil Nuh, District Gurgaon and revenue entries showing the defendants to be owners and plaintiff as mortgagee instead of owner were claimed to be wrong on the ground that defendants No. 2 to 4 or defendant No. 5 have no right, title or interest in the suit land. Nor they have been in possession of the suit land or any part of the same for the last about 35 years and that the plaintiff is in actual physical cultivating possession of the suit land for the last 35 years and is full-fledged owner continuously, openly, peacefully, without any interruption or objection from any person including the defendants. So, he has become owner by way of adverse possession. Entries showing the defendants to be owners of the suit land and the plaintiff as mortgagee are wrong and the defendants are threatening to dispossess the plaintiff from the suit land. Hence the suit.

3. Defendants No. 2 to 5 were proceeded against ex-parte vide order dated 04.11.1985. Defendant No. 1 contested the suit by filing written statement that defendants No. 2 to 4 were owners of the suit land and they transferred their right in favour of the answering defendant vide registered sale deed dated 27.09.1984 and he is owner in possession of the same. Revenue entries in the names of defendants No. 2 to 4 were correct. Defendants No. 2 to 4 and their predecessor-in-interest were in possession of the suit land as owners for the last about 35 years. Therefore, in the alternative, they had acquired ownership rights by adverse possession. Jamabandi entries were read over in the village openly and the plaintiff never raised any objection regarding those entries. Now the plaintiff is estopped from challenging those entries. The suit land has been transferred in his favour without encumbrances and he is owner in possession of the same. The plaintiff has no right to file the present suit and has no cause of action and prayed for dismissal of the suit.

4. The plaintiff filed replication controverting the pleas of defendant No. 1 and reiterated his claim as set out in the plaint and alleged that the sale deed in favour of the answering defendant is illegal, null and void and does not affect the rights of the plaintiff in the suit land.

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

“1. Whether the plaintiff is owner in possession of the suit land, as alleged? OPP

2. Whether the suit is time barred, as alleged? OPD

3. Whether the plaintiff is estopped from filing the present suit? OPD

4. Whether the suit is not maintainable in the present form? OPD

5. Whether the suit has not been properly valued for the purposes of Court fee and jurisdiction? OPD

6. Relief.”

6. In order to prove these issues, the parties led their respective evidence and after hearing arguments, learned Sub Judge, 1st Class, Gurgaon decreed the suit partly only to the extent that the plaintiff is in possession of the suit land and entry in Jamabandi showing the plaintiff in possession as mortgagee is wrong and that the defendants are restrained from interfering into possession of the plaintiff.

7. Appeal was preferred by the satisfied plaintiff and the learned first Appellate Court decreed the suit of the plaintiff in toto by modifying the judgement and decree passed by the learned Sub Judge, 1st Class, Gurgaon.

8. Aggrieved by the judgement and decree so passed, the appellant-defendant No. 1 has filed the present appeal.

9. Notice was served upon the respondent-plaintiff.

10. During the pendency of the appeal, both the appellant and the respondent-plaintiff died and their legal representatives were brought on record.

11. Learned counsel for the appellants argued that the learned first Appellate Court failed to notice that the respondent-plaintiff has not approached the Court after disclosing all the facts. Rather, he has falsely claimed himself to be owner of the suit land being his ancestral land and when that fact was not proved, the learned first Appellate Court twisted the facts and wrongly held that the claim of the respondent-plaintiff is with regard to adverse possession. He further contended that in order to establish ownership on the basis of adverse possession, the person asserting adverse possession has to prove the date when he came into possession, nature of the possession and the factum that the possession was known to legal claimants. All the ingredients are missing. The learned first Appellate Court ignored the fact that the possession, however long, cannot be treated adverse till all the ingredients are pleaded and proved. The learned first Appellate Court has recorded a finding that the plaintiff has perfected his title by way of adverse possession inspite of noticing the revenue entries showing the plaintiff to be in possession on the basis of rejected mutation. So, the findings recorded by the learned first Appellate Court be set aside and appeal be allowed.

12. On the other hand, learned counsel for the respondents argued that there is no illegality or infirmity in the findings recorded by the learned first Appellate Court. The learned first Appellate Court has rightly modified the judgement and decree by recording a finding that the plaintiff has perfected his title by way of adverse possession as possession of the plaintiff was neither permissive nor as a tenant. So, it was certainly adverse to the true owners and as such there is no merit in the appeal and the same be dismissed.

13. I have considered the submissions made by learned counsel for the respondents, but find the same to be devoid of merit.

14. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgement of the Supreme Court in the case of **Pankajakshi (Dead) through LRs and others Vs Chandrika and others** (2016) 6 SCC 157 followed by the judgements in the case of **Kirodi (since deceased) through his LR Vs Ram Parkash and others** (2019) 11 SCC 317 and **Satender and others Vs Saroj and others** 2022(12) Scale 92. Relying upon the law laid down in the aforesaid judgements, no question of law is required to be framed.

15. The findings recorded by the learned first Appellate Court are contained in para 11 of the impugned judgement which read as under:-

“11. Here, it may be mentioned that defendant Nos. 2 to 4 sold 5/6 share of the suit land to defendant No. 1 vide sale deed Ex. D.1 dated 27.9.84. However, the question to be determined is whether the plaintiff has become owner of the suit land by adverse possession or not. In this behalf, learned counsel for the appellant contended that the present suit was filed on 9.10.85 whereas the plaintiff is in possession of the suit land since 1960-61 and thus, his possession was for more than 25 years before the filing of the suit and his possession was open, continuous and hostile and so, the plaintiff has become owner of the suit land by adverse possession. There is considerable merit in the submission. As already mentioned, the plaintiff's possession has been consistently recorded in the revenue record as like that of owners on account of mortgage or rejected mortgage. In fact, mutation of mortgage was rejected on 1.12.61 as per copy of mutation Ex. P14 and so, the plaintiff's possession was on account of rejected mortgage and the subsequent entries that the possession was on account of mortgage or oral mortgage instead of rejected mortgage were by way of inadvertence only and in fact, plaintiff's possession continued on account of rejected mortgage. Even otherwise, it is the case of both the sides that no mortgage was ever created in favour of the plaintiff. The plaintiff, in the plaint itself, has alleged that he was never mortgagee and the revenue entries showing him as

mortgagees are wrong. Defendant No. 1 in his written statement also pleaded that no mortgage was ever created in favour of the plaintiff. So, the plaintiff's possession was not as mortgagee. The revenue entries also show that plaintiff did not pay any rent or Lagan for the suit land to defendants recorded as owners or to anybody else. It is also the plaintiff's case as well as oral evidence that he has never paid any rent to anybody. It is also not the defendant's case that the plaintiff ever paid any rent to them or to anybody else. Thus, the plaintiff's possession was neither as mortgagee nor as tenant. He has alleged that his possession was adverse possession. The defendants have not alleged any other capacity in which the plaintiff has been in possession of the suit land. On the other hand, the defendants have even denied the factum of plaintiff's possession. However, plaintiff's possession over the suit land stands fully established as already discussed. So, the plaintiff's possession was only adverse and not in any other capacity because neither the plaintiff nor the defendants have alleged any other capacity because neither the plaintiff nor the defendants have alleged any other capacity of the plaintiff's possession. Even otherwise, the plaintiff's possession was on account of rejected mortgage as possession was admittedly not as mortgagee. He also did not pay any rent or lagan etc. to anybody. So, obviously his possession was adverse and it continued for much longer period than the requisite period of 12 years. So, his possession ripened into title."

16. It is admitted that initially possession of the plaintiff in revenue record is recorded on the basis of mortgage and as per order Exhibit P14, the mutation entered on the basis of oral mortgage was rejected by the revenue authorities. So, this clearly shows that the possession initially of the respondent-plaintiff was permissive possession and was not adverse possession. Permissive possession would not turn into adverse possession merely on the basis of an act of revenue officials, whereby the mutation entered regarding oral mortgage was rejected.

17. Learned counsel for the appellants has relied upon judgement of this Court in ***Yad Ram and others Vs Murti Behari Ji***, 2016 (2) PLJ 521, where in para 17 it has been recorded as under:-

"17. A mere possession or permissive possession does not demonstrate spectrum of adverse possession. For claiming adverse possession, the defendants must prove that their possession is "nec

vi, nec clam, nec precario”, i.e. peaceful, open and continuous. The possession should be actual, open, notorious, exclusive and continuous for the required time as provided in law. The necessary ingredients of adverse possession as enumerated in 2004(2) RCR (Civil) 702 titled as Karnataka Board Wakf v. Government of India are that the adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. A party claiming adverse possession must prove that his possession is “nec vi, nec clam, nec precario”, i.e. peaceful, open and continuous and it should be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the original owner and is actual, visible, exclusive, hostile and continued over the statutory period.”

18. As per judgement of this Court in **Yad Ram** (supra), it is clear that the adverse possession must start with a wrongful dispossession of the original owner. In the present case, though plaintiff is in possession not as a tenant and even not as a mortgagee, but initial possession of the plaintiff was recorded as mortgagee and the mutation on the basis of oral mortgage was rejected by the revenue authorities. Though the appellant-defendant No. 1 has not taken the stand that plaintiff was ever inducted as mortgagee, but considering the revenue record, it is clear that initially the possession of the plaintiff was permissive possession and it was for the plaintiff to prove on record as to when his possession turned adverse or hostile to the original owner, whereas a perusal of testimonies of the plaintiff and his witnesses clearly show that the plaintiff alleges that he is in possession over the suit property as the suit property is his ancestral land. The plaintiff appeared as PW1 and in examination-in-chief, he has deposed that he is in possession of the suit land as owner and the defendants have no connection with the suit land. He is cultivating the suit land for the last 30-35 years. Before that his father was cultivating the same. He is cultivating the suit land as owner and has not paid any rent and defendants No. 2 to 5 have no right to alienate the suit land. In his examination-in-chief,

the plaintiff has nowhere recognized the defendants as owners of the suit land or has asserted that his possession over the suit land is hostile to the rights of the defendants and in cross-examination he has deposed that the suit land is ancestral property. So, in his testimony, the plaintiff has nowhere asserted that the defendants were ever owners of the suit property. In order to succeed in a plea of adverse possession there must be a specific pleading of disclaiming the title from a particular date and hostile assertion of right of the plaintiff. Mere uninterrupted, peaceful possession, however long it may, would not cloth the plaintiff with ownership of the suit land. In ***Madhav Krishna and another Vs Chandra Bhaga and others***, 1997 (2) SCC 203, Apex Court has held that when no specific plea disclaiming title from a particular date and hostile assertion of ownership is pleaded, the plea of adverse possession would not succeed.

19. The relevant portion of the judgement of the Hon'ble Apex Court reads as under:-

"... The plea of adverse possession as against Mansaram was not pleaded. In this case, except repeating the title already set up which was negated in the earlier suit, namely, that they had constructed the house jointly with Mansaram, there is no specific plea of disclaiming the title of the respondents from a particular date, the hostile assertion thereof and then of setting up adverse possession from a particular date to the knowledge of the respondents and of their acquiescence. Under these circumstances, unless the title is disclaimed and adverse possession with hostile title to that of the Mansaram and subsequently as against the appellant is pleaded and proved, the plea of adverse possession cannot be held proved. In this case, such a plea was not averred nor evidence has been adduced. The doctrine of adverse possession would arise only when the party has set up his own adverse title disclaiming the title of the plaintiff and established that he remained exclusively in possession to the knowledge of the appellant's title hostile to their title and that the appellant had acquiesced to the same...."

20. Now considering the fact that the plaintiff has never pleaded that the defendants were ever owners of the suit property and he is in possession

over the suit property on the basis of adverse possession, the findings recorded by the learned first Appellate Court that the plaintiff has successfully perfected his title over the suit land by way of adverse possession are certainly wrong and erroneous and the findings recorded by the learned Sub Judge, 1st Class are based upon correct appraisal of pleadings and evidence on record.

21. As such, the appeal is allowed.
22. The judgement and decree dated 05.05.1990 passed by the learned first Appellate Court is set aside and the judgement and decree dated 05.08.1989 passed by the learned Sub Judge, 1st Class, Gurgaon is hereby restored.

(VIRINDER AGGARWAL)

JUDGE

20th August, 2025

Amodh Sharma

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