



5

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

RSA No. 2272 of 1993 (O&M)**Reserved on : 13.11.2025****Pronounced on : 18.11.2025****Uploaded on: 19.11.2025.**

Chiman Lal

... Appellant

Versus

Faqira (Since Deceased) Through LRs & Another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present: Mr. Amit Jain, Senior Advocate with
Ms. Aeshna Jain, Advocate for the appellant.

None for the respondents

VIRINDER AGGARWAL, J.

1. The instant Regular Second Appeal (for short to be referred as “RSA”) has been instituted by the appellant–plaintiff to impugn the judgment and decree dated 01.10.1993 rendered by the learned District Judge, Gurgaon, whereby the findings of the trial Court were unequivocally affirmed. The trial Court, vide its judgment and decree dated 26.04.1990 passed by the learned Sub Judge First Class, Gurgaon, had dismissed the suit instituted by the appellant seeking a declaratory decree coupled with the consequential relief of permanent injunction. The appellant now challenges the concurrent findings of both Courts below as being legally unsustainable and factually erroneous.



2. The appellant's case, as pleaded, is that he is the lawful owner and possessor of a residential house along with an adjoining parcel of land delineated in the site plan by the letters 'ABCDEF' (shown in green) and 'GHCB' (shown in red). The portion marked 'GHCB' corresponds to Plot No. 302 of the *Khasra Abadi Paimaish* prepared in the year 1877. The appellant asserts that he is the adopted son of one Ganga Lal and traces his lineage to Jalim, who stands recorded as a co-owner of the aforesaid Plot No. 302. It is further averred that Har Narain, son of Balle alias Moti also a member of the same family died without issue, resulting in the devolution of his share as well upon the appellant. Proceeding on these premises, the appellant impugned the sale deed dated 17.10.1979 executed by respondent No.1/defendant No.1 in favour of respondent No.2/defendant No.2, contending that respondent No.1 had no subsisting right, title, or interest to effect any valid transfer of the property in question. The suit was accordingly instituted.

3. Upon service of summons, the respondents entered appearance through counsel and contested the claim by filing a written statement, wherein they categorically denied any filial or ancestral connection between the appellant and Har Narain. It was pleaded that Har Narain belonged to the Jat community, while the appellant is a Brahmin, thereby negating any purported relationship. The respondents further averred that Har Narain was survived by a son, Bhule, whose widow, Phullo, lawfully succeeded to his estate, and that the relevant mutation was subsequently sanctioned in favour of Deep Chand, the grandfather of respondent No.1/defendant No.1. On this basis, it was asserted that respondent No.1/defendant No.1 is the legitimate heir and has been in



continuous, longstanding possession of the property, and was, therefore, fully competent to execute the impugned sale deed in favour of respondent No.2/defendant No.2.

3.1. The respondents additionally claimed that they had been in uninterrupted possession of the suit land for over five decades and had deposited building materials, including *bitora (a small shed or space for storing dung cakes)* and stones, upon it. They accordingly prayed that the suit be dismissed as wholly devoid of merit.

4. The appellant–plaintiff thereafter filed a replication, wherein the allegations set forth in the written statement were specifically traversed and the pleadings contained in the plaint were emphatically reaffirmed. Upon a meticulous examination of the pleadings and the competing claims of the parties, the Court proceeded to frame the following issues for determination, with a view to securing a precise, coherent, and legally structured adjudication of the controversies arising in the matter:-

1. Whether the plaintiff is owner in possession of the plot in question as alleged in the plaint?OPP.
2. Whether the plaintiff is estopped by his own acts and conduct from bringing this suit?OPD.
3. Whether the suit is not within time?OPD.
4. Whether the suit is bad for non-joinder and mis-joinder of parties?OPD.
5. Relief

5. Both parties were afforded full and adequate opportunity to adduce evidence in substantiation of their respective claims and defence. Upon the culmination of the evidentiary proceedings, and after hearing learned counsel for the parties at length, the learned Sub Judge Ist Class, Gurgaon, proceeded to



dismiss the suit. Aggrieved by the judgment and decree so rendered by the Trial Court, the appellant–plaintiff preferred an appeal before the learned District Judge, Gurgaon. The said appeal, however, met the same fate, as the learned First Appellate Court, upon a comprehensive reappraisal of the record, affirmed the findings and decree of the Trial Court and consequently dismissed the appeal.

6. The appellant has instituted the instant appeal before this Court challenging the concurrent judgments and decrees rendered by the learned Courts below. The appeal, upon being found to merit consideration, was formally admitted to regular hearing, and notice was duly issued to the respondents. In response thereto, Mr. Vikas Kumar Dhariwal, Advocate, initially entered appearance on behalf of the legal representatives of the respondents; however, he subsequently chose not to contest the matter any further and remained absent at the stage of final arguments. Consequently, the appeal was heard in its entirety on the submissions advanced by learned counsel appearing for the appellant alone.

6.1. To enable a thorough, informed, and effective adjudication of the issues arising in the appeal, the complete record of the Courts below was requisitioned and placed before this Court for perusal and consideration.

7. I have heard learned counsel for the appellant at considerable length and have bestowed anxious and thoughtful consideration upon his submissions, keeping in view the pleadings of the parties, the evidentiary material brought on record, and the concurrent findings returned by the Courts below. The entire record has been subjected to a meticulous and comprehensive scrutiny for the purpose of determining *‘whether the impugned concurrent*



judgments and decrees suffer from any jurisdictional error, manifest perversity, misappreciation of evidence, or any other legal infirmity that would justify and necessitate interference in the exercise of appellate jurisdiction’?

8. Learned counsel for the appellant has vehemently contended that the Courts below committed a grave error in dismissing the suit by placing disproportionate reliance upon the alleged possession of the defendants while simultaneously failing to appreciate the evidentiary record in its true and correct perspective. It is urged that the appellant, being an admitted co-sharer through his ancestor Jalim, possessed an inherent right to safeguard the entirety of the joint property from encroachment or interference by persons who themselves were unable to substantiate any valid or lawful title.

8.1. Counsel further submits that the Courts below misdirected themselves in assuming that mere long-standing possession conferred a superior right upon the defendants, notwithstanding their complete failure to establish any demonstrable relationship with the recorded owner, Har Narain. It is further argued that the respondents were wrongly presumed to be in possession of the suit land, particularly when the property in question is an undisputedly vacant plot. In law, possession of a vacant site presumptively follows title, and therefore must be deemed to vest with the true owner.

8.2. It is additionally contended that both Courts erred in disregarding the report of the Local Commissioner (Ex. P-9), which materially supported the appellant’s case and ought to have been given due evidentiary weight. According to learned counsel for the appellant, the findings recorded by the Courts below suffer from patent perversity, the defence of adverse possession is wholly misconceived and unsupported, and the appellant, as a co-sharer, was



fully entitled to the relief of injunction. The denial of such relief, it is argued, rests upon a fundamentally flawed appreciation of law and facts.

9. I have heard learned counsel for the appellant with due thoroughness and have undertaken a meticulous and comprehensive examination of the entire record.

10. The present appeal, in its essence, culminates in the emergence of the following ‘*quaestio juris substantialis*’ requiring authoritative determination by this Court:-

“Whether a co-sharer, who undisputedly claims succession from one of the recorded proprietors of a joint holding, possesses the legal authority to safeguard and defend the entirety of such joint property against the intrusion of a stranger or any person who fails to establish a clear, valid, and legally enforceable title thereto”?

11. Admittedly, the appellant has placed reliance upon the Khasra Abadi Paimaish of 1877 (Ex. P-3), wherein the names of Jalim and Har Narain stand recorded as co-owners of Plot No. 302. The appellant’s claim to ownership over the entire plot is predicated upon establishing his lineal descent from both these erstwhile proprietors. Insofar as Jalim is concerned, there exists no contest; it stands accepted that the appellant traces his ancestry to Jalim’s branch and has raised construction over one half of the plot corresponding to that branch.

11.1. However, with respect to the share attributed to Har Narain, the appellant has signally failed to produce any cogent pedigree, documentary evidence, or genealogical record demonstrating the devolution of Har Narain’s estate upon him. Indeed, during the course of his testimony, the appellant



candidly conceded that he was unable to elucidate his relationship with Har Narain and could not even assert '*whether any Har Narain belonging to his caste ever resided in the village*'? Consequently, the appellant's asserted succession to the share of Har Narain remains wholly unsubstantiated.

11.2. Conversely, the respondents sought to establish their own descent from Har Narain through one Bhule, his widow Phullo, and thereafter Deep Chand. Yet, the lower appellate Court itself recorded a categorical finding that the evidence adduced was insufficient to conclusively identify the respondents' predecessor as the very same Har Narain reflected in Ex.P3. The patronymic particulars appearing in the respondents' documents do not correspond to the entry "Har Narain s/o Bhalle" recorded in the Paimaish. Thus, the respondents too have failed to establish a lawful and traceable title to Har Narain's share.

11.3. The inescapable conclusion, therefore, is that neither party has succeeded in proving exclusive title to the disputed vacant portion representing the half-share originally attributed to Har Narain in Ex.P3. In the absence of any satisfactory proof to the contrary, the said portion must necessarily be regarded as continuing to form part of the undivided joint property. Consequently, the sale deed executed by defendant No.1 in favour of defendant No.2 is bereft of legal efficacy, for it is a settled principle of law that no person can convey a better title than he himself possesses, and defendant No.1 has failed to establish ownership of the land purported to have been transferred.

12. The learned First Appellate Court dismissed the suit principally on the premise that the respondents' long possession of the vacant portion entitled them to be treated as owners in the absence of a superior title asserted by the



appellant. With respect, this reasoning is legally unsound. The First Appellate Court overlooked the material report of the Local Commissioner (Ex. P-9), which corroborates that the suit land is an open, vacant plot. It is well-settled that possession of a vacant site ordinarily aligns with ownership and carries a presumption in favour of the true proprietor; mere placing of bricks or cow dungs to assert possession, in the absence of clear proof of title, does not by itself confer a better right upon a stranger.

12.1. Accordingly, the learned First Appellate Court erred in holding the respondents' in long possession of a vacant plot into merely on the basis of placing bricks or cow dung cakes, particularly when the documental and testimonial record fails to link them to the recorded proprietor, and when the appellant's co-ownership through Jalim remains undisputed. The concomitant conclusion recorded by the Court below is, therefore, attended by material misappreciation of law and fact.

13. In view of the foregoing analysis, it stands firmly established that although the appellant has satisfactorily demonstrated his succession to Jalim, neither party has been able to substantiate any lineal or lawful descent from Har Narain. As a natural corollary, no exclusive title to the vacant portion of the property can be conferred upon the respondents. The report of the Local Commissioner (Ex. P-9) unequivocally affirms that the suit land is a vacant plot; consequently, in law, its possession must be deemed to follow title and, therefore, to vest in the appellant being an admitted co-owner to the exclusion of all others save the true owners, if any.



13.1. The findings recorded by both the Courts below, having been rendered in disregard of the settled legal principles and the material evidence on record, are manifestly unsustainable and warrant appellate correction.

14. The appellant, being an admitted co-owner and in deemed possession of the vacant joint property to the exclusion of all strangers, is fully entitled to protect and preserve such possession. The grant of injunctive relief in his favour thus becomes not only appropriate but legally warranted.

15. For the reasons comprehensively delineated here-in-above, this Court is impelled to conclude that the appellant, being an unequivocally acknowledged co-sharer, stands fully vested with the juridical authority to safeguard, maintain, and assert his possession over Plot No. 302. The respondents, having signally failed to demonstrate even the faintest indicia of a legally cognizable right, title, or interest in the property, are hereby permanently restrained from undertaking any act whether overt, covert, collateral, or consequential that may, in any manner whatsoever, disrupt, dilute, or encroach upon the appellant's peaceful, continuous, and constructive possession.

15.2. In sequel to the foregoing conclusions, the concurrent judgments and decrees rendered by the Courts below being vitiated by patent misdirection, a fundamental misapplication of the governing principles of co-ownership, and an erroneous assessment of the evidentiary corpus cannot be countenanced in law and are, therefore, set aside in their entirety. Ergo, the present appeal stands allowed with all consequential and attendant legal ramifications.



16. Since the principal appeal has now been adjudicated and stands finally disposed of on merits, all ancillary, interlocutory, or pending application(s), if any, are shown to be subsisting on the record shall, by necessary implication, also stand disposed of, as no separate orders are required thereon.

18.11.2025
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

- (i) Whether speaking/reasoned : Yes/No
- (ii) Whether reportable : Yes/No