



RSA-2774-1993

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

RSA-2774-1993

Judgment reserved on 14.10.2025
Judgment pronounced on 16.10.2025

SURESH CHANDER**... APPELLANT****VERSUS****BHULA RAM****...RESPONDENT****CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL**

Present: Mr. Ashish Gupta, Advocate,
Mr. Gurdeep Singh Sidhu, Advocate and
Mr. Duni Chand, Advocate
for the appellant.

PARMOD GOYAL, J.

1. The present Regular Second Appeal has been preferred by the plaintiff-appellant against the concurrent findings of facts recorded by both the courts below. The plaintiff-appellant is aggrieved by the judgment and decree dated 07.01.1991 passed by the learned Sub-Judge Ist Class, Hansi, as well as the judgment and decree dated 15.09.1993 passed by the learned Additional District Judge, Hisar, whereby the suit filed by the plaintiff-appellant and the first appeal preferred against dismissal of suit were dismissed.

2. The simple case of plaintiff was that he along with proforma defendants No.2 and 3 had purchased one kanal land measuring 18 karam x 10 karam comprised in Khasra No. 928/1-2 min in Mauja Hansi from one Sher Singh vide sale-deed dated 09.10.1979 registered on 12.10.1979 marked as ABCD in the site plan. That defendant No. 1 had tried to take forcible possession of suit land without any right over the same and had threatened him to raise construction over the same, despite repeated requests made by plaintiff not to interfere in his



ownership and possession. He accordingly sought permanent injunction against defendant No. 1.

3. Defendant No. 1 filed a detailed written statement taking number of preliminary objections regarding estoppel, suit being barred by own act and conduct, plaintiff having not approached the Court with clean hands, maintainability, suit being bad for non-joinder and mis-joinder of necessary parties, limitation and suit not been verified in accordance with law. Defendant No. 1 claimed ownership of the plot in dispute by way of adverse possession. He asserted that the suit land falls in Khasra Nos. 927 and 928, with Khasra No. 928 lying to the east of Khasra No. 927. It was stated that defendant No. 1 is the owner and in possession of Khasra No. 927, which is bounded by the house of Suraj Bhan, the house of Ram Kishan, Khasra No. 928, and a street. The defendant further asserted that the plaintiff and proforma defendants have no concern with the plot comprised in Khasra No. 927. He claimed that a vacant plot measuring 53 feet x 52/53 feet lies on the eastern side of Khasra No. 927 and that he has been in possession of the said land since 1958. Defendant No. 1 also stated that he had constructed a wall on the eastern side of the plot, though the wall has since fallen. According to the defendant, both the plots were amalgamated into one. It was further claimed that the house of Suraj Bhan falls within Khasra No. 927 and a portion of his house lies in Khasra No. 928. Defendant No. 1 alleged that Suraj Bhan purchased some portion of the land from him for construction of a house and also acquired some portion of Khasra No. 928. Defendant No. 1 further alleged that Ram Kishan had taken unauthorized possession of some land owned by the defendant, which led to the demarcation of the land. He denied that the plaintiff or proforma defendants are in possession of the suit property in any capacity. The defendant further claimed to have purchased 5 kanals and 13 marlas



of land from Narain Singh, comprised in Khasra No. 927, vide registered sale deed dated 02.12.1958. He stated that most of this land has been disposed of and houses have been constructed thereon. Defendant No. 1 claimed continuous, uninterrupted possession over land measuring approximately 53.8 feet by 49 feet and asserted ownership by way of adverse possession. He further contended that the sale deed dated 12.10.1979, relied upon by the plaintiff, is illegal and has no effect on the rights of the defendant. Accordingly, the defendant prayed for dismissal of the suit.

4. From the pleadings the parties, following issues were framed:

- “i. Whether the plaintiff is entitled to injunction as prayed for? OPP.*
- ii. Whether the plaintiff has no locus-standi to the present suit? OPD.*
- iii. Whether the plaintiff is estopped from filing the present suit by his own act and conduct? OPD.*
- iv. Whether the plaintiff has got come to the court with clean hands? OPD*
- v. Whether the suit is not maintainable in the present form? OPD*
- vi. Whether the suit is bad for non-joinder and misjoinder of necessary parties? OPD*
- vii. Whether the suit is barred by limitation?*
- viii. Whether the plaint is not verified according law, if so, to what effect? OPD.*
- ix. Whether the defendants have become owners of plot in their possession by way of adverse possession ? OPD.*
- x. Relief.”*

5. In addition to above issues, following additional issues were also framed:

- (i) Whether the plaintiff has no cause of action to file the present suit? OPD*



- (ii) *whether the site plan filed by the plaintiff is wrong as alleged in the written statement? OPD*
- (iii) *whether the defendant can take new pleas as alleged in the written statement? OPD*
- (iv) *Relief.”*

6. The learned Court of first instance decided Issue No. 1 in favor of the defendant and against the plaintiff. Issues Nos. 2, 3, 4, 5, 7, 8, and 9 were decided in favor of the plaintiff and against the defendant. Issue No. 6 was decided in favor of the defendant and against the plaintiff. Additional Issues No. 1, 2, and 3 were decided in favour of the defendant and against the plaintiff.

7. The appeal preferred by the plaintiff was dismissed by the First Appellate Court vide the impugned judgment and decree dated 15.09.1993.

8. In the present case, the claim of the plaintiff-appellant is based on the sale deed dated 09.10.1979, registered on 12.10.1979. The plaintiff-appellant has asserted that he had purchased the suit land, comprised in Khasra No. 928/1, vide the said sale deed. To prove his ownership of the suit land, the plaintiff-appellant duly examined the deed writer, who was the scribe of the sale deed, as PW-5. The sale deed was proved as Exhibit PW-5/A. Apart from the evidence of the scribe, the plaintiff himself appeared as PW-1 and examined Mam Chand (PW-2), Phool Chand (PW-3) and Chuni Lal (PW-4). All the witnesses examined by the plaintiff asserted that the plaintiff had purchased the suit land vide sale deed Ex. PW-5/A from one Sher Singh.

9. On the other hand, the defendant had claimed that he had purchased the land comprised in Khasra No. 927 in 1958 from Narain Singh. The defendant further asserted that the vacant land lying on the eastern side of Khasra No. 927 has been in his possession since 1958. That he has become the owner of the said



land by way of adverse possession.

10. Learned counsel for the appellant has contended that the Courts below erred in dismissing the suit and the appeal preferred by the plaintiff-appellant. It is submitted that the Courts failed to take due notice of the admission made by defendant-respondent No. 1 regarding vacant plot measuring approximately 53 feet by 52/53 feet, situated on the eastern side of Khasra No. 927, which forms part of Khasra No. 928/1. The defendant-respondent claimed ownership of this vacant plot, which is part of Khasra No. 928/1, on the basis of adverse possession. However, the defendant-respondent has failed to establish such adverse possession. Once the defendant raises the plea of adverse possession, it implies an admission of the plaintiff-appellant's ownership, as adverse possession can only be claimed against a true owner. It is asserted that this crucial aspect of the case was not taken in consideration by both the Courts below. Furthermore, reliance placed upon the report of the Local Commissioner (Exhibit D-7) is without any basis, as the Local Commissioner's report contradicts the orders passed by the Courts below. The report wrongly demarcated Khasra Nos. 927 and 928, whereas the plaintiff-appellant is claiming ownership solely over the land comprised in Khasra No. 928. Similarly, the demarcation made by the revenue authorities behind the plaintiff's back pertain to Khasra No. 927 and not to Khasra No. 928. Therefore, it could not have been validly considered by the Courts below to non-suit the plaintiff-appellant.

11. On consideration, I find merit in the contentions raised on behalf of the learned counsel for the plaintiff-appellant. In the present case, the plaintiff is not claiming any right over Khasra No. 927. The plaintiff claims ownership of plot measuring 1 kanal, comprised within Khasra No. 928/1, based on sale deed registered on 12.10.1979. On the other hand, the defendant claims ownership over



Khasra No. 927, which he had purchased in 1958. However, he has not asserted any claim over Khasra No. 928 based on any document of title. Although the defendant has claimed that a vacant plot measuring approximately 53 feet x 52/53 feet on the eastern side of Khasra No. 927 is under his possession and has asserted adverse possession over the same. However, this claim remains unsubstantiated.

12. Perusal of the jamabandi relied upon by the defendant (Exhibit D-1), as well as the sale deed (Exhibit D-5), clearly shows that the defendant is the owner of Khasra No. 927 and has no ownership or concern with Khasra No. 928/1 on the basis of any title deed. It is noteworthy that Exhibit DW-2/B, the site plan appended to Exhibit DW-2/A, and the application for demarcation made by none other than the defendant, establishes that Khasra No. 928/1 adjoins the eastern side of Khasra No. 927 and it falls on eastern side of khasra No. 927. From the documents relied upon by defendant No. 1 himself, it is evident that the plot measuring approximately 53 feet x 52/53 feet on the eastern side of Khasra No. 927, which the defendant claims by way of adverse possession, is in fact part of Khasra No. 928/1. The defendant asserts that he amalgamated the plot left with him in Khasra No. 927 with the vacant land on the eastern side of Khasra No. 927, treating it as a single plot. This, in fact, demonstrates that the defendant is attempting to create confusion by claiming a portion of land that falls within Khasra No. 928/1 by unlawfully combining it with Khasra No. 927. For this reason, even the Local Commissioner, through his report (Exhibit D-7), wrongly concluded that the plot in question differs from the plot depicted in the site plan annexed to the plaint. There is no material to conclude that defendant even amalgamated part of khasra No. 928/1 with plot owned by him as is being claimed by him.

13. It is worth noting that at the site, a vacant plot was found measuring



approximately 54 feet towards the east, 53.8 feet towards the west, 116.5 feet towards the north, and 103 feet towards the south. This area is almost equal to or greater than the area claimed by the plaintiff, who has described the plot owned by him as measuring 18 karam x 10 karam, which converts roughly to 100 feet x 55 feet. Therefore, the report of the Local Commissioner in this case cannot be relied upon as a basis to non-suit the plaintiff-appellant.

14. In the present case, the plaintiff has succeeded in proving the due execution of the sale deed dated 09/12.10.1979 in respect of land measuring one kanal, comprised in Khasra No. 928/1-2 min. There is no evidence on record to challenge the validity of this sale deed. On the other hand, the defendant has claimed adverse possession over a part of the suit land, which the defendant claims to the extent of 54 x 53 feet situated to the east of Khasra No. 927. The plot in question has been proved to be a vacant plot. Except for oral assertions by the defendant that he has been in possession of the plot since 1958, there is no substantive evidence available to establish his continuous, open, and hostile possession over the vacant plot located to the east of Khasra No. 927 which falls in khasra No. 928/1. Furthermore, the defendant does not claim ownership of the suit land through any title deed. His claim is solely based on adverse possession. However, in the case of a vacant plot, possession generally follows ownership, unless proven otherwise.

15. In the present case, in the absence of any substantive evidence to establish the defendant's possession, it cannot be held that the defendant has become the owner of the suit property by way of adverse possession. The defendant has failed to prove his adverse possession over the suit land, as he has not demonstrated continuous, open, and hostile possession of the land in question.

It is settled law that a claim of adverse possession, by its very nature,



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acknowledges the title of the true owner. Therefore, once the defendant raises a plea of adverse possession and fails to substantiate it, the ownership of the suit property based on the sale deed relied upon by the plaintiff-appellant stands affirmed. Both the Courts below erred in holding that the plaintiff failed to prove his case. On the contrary, the plaintiff has duly established his ownership as well as possession over the suit property. The report of the Local Commissioner (Ex. D-7) only reflects that there is more land available in Khasra No. 928/1 than what is claimed by the plaintiff under sale-deed dated 09.12.2010. However, once it is established through the said report that the land comprised in Khasra No. 928/1 exists, as claimed by the plaintiff, it was not open for the Courts to doubt the plaintiff-appellant's ownership and possession merely because the Local Commissioner noted that the dimensions of the vacant land at the site were greater than what was claimed.

16. Accordingly, both the Courts below have erred in appreciating the evidence placed on record and apply established principles of law. As such, the judgments and decrees dated 07.01.1991 and 15.09.1993 passed by the Courts below are liable to be set aside.

17. The suit of the plaintiff is hereby decreed with costs. The appeal is allowed.

18. Pending miscellaneous application(s), if any, shall also stand disposed of.

16.10.2025
manoj

(PARMOD GOYAL)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No