



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

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**CM-6114-C-2025 & CM-6115-C-2025
IN/AND RSA-924-2025
Date of Decision : 14.07.2025**

JARNAIL SINGH

.... Appellant

VERSUS

MS. SUDERSHAN ARORA

.... Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Viren Sibal, Advocate and
Mr. Satyam Sharda, Advocate for the appellant.

Mr. Amitabh Tewari, Advocate for the respondent.

ALKA SARIN, J. (ORAL)

CM-6114-C-2025

1. This is an application for early hearing of the main appeal which is listed for 29.08.2025.

2. Learned counsel for the respondent states that he has no objection if the present application is allowed.

3. In view of the above, the present application is allowed and the date of hearing of the main appeal is preponed. With the consent of learned counsel for the parties, the main appeal is taken on Board today itself.

RSA-924-2025

4. The present regular second appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 25.07.2018

passed by the learned Trial Court and the judgment and decree dated 16.12.2024 passed by the learned First Appellate Court dismissing his appeal.

5. Brief facts relevant to the present *lis* are that the plaintiff-appellant herein filed a simplicitor suit for permanent injunction averring therein that Plot No.511, Milk Colony, Dhanas, Chandigarh (hereinafter referred to as the 'suit property') was allotted to one Kartar Singh (predecessor-in-interest of the defendant-respondent herein) in the year 1976 on lease hold basis for 30 years. The lease was extended from time to time and the whole amount was deposited. Kartar Singh (predecessor-in-interest of the defendant-respondent herein) took a friendly loan from the plaintiff-appellant to raise construction on that plot, however, he failed to repay the same. The plaintiff-appellant is stated to have requested Kartar Singh (predecessor-in-interest of the defendant-respondent herein) to repay the loan but he failed to do so. It was further averred that Kartar Singh (predecessor-in-interest of the defendant-respondent herein) handed over possession of the aforesaid plot by stating that he would pay the amount within a period of one year and if he failed to do so, the plaintiff-appellant would become the exclusive owner of the suit property. Since Kartar Singh (predecessor-in-interest of the defendant-respondent herein) failed to repay the amount, the plaintiff-appellant has been in possession of the suit property since 16.11.1992. It was further averred that he had raised construction over the plot by spending a huge amount and is residing there with his family members. It was further pleaded that he has been running a milk dairy in the premises with 38 buffaloes. After 16.11.1992, Kartar Singh came at the spot, but the plaintiff-appellant told him that there is

no settlement which was possible and that he had become owner in possession of the suit property. Further that Kartar Singh (predecessor-in-interest of the defendant-respondent herein) could not take possession of the same from him. Thereafter, more construction was raised on the spot by the plaintiff-appellant. It was further the stand taken that the possession of the plaintiff-appellant over the suit property was actual, open, notorious, continuous, exclusive and hostile to the true owner. It was further the case set up that in 2016 the defendant-respondent approached the E.O., U.T. Chandigarh alleging that the plaintiff-appellant was in illegal possession of the suit property and had raised construction illegally. The site was inspected, and a show cause notice was issued in the name of Kartar Singh (predecessor-in-interest of the defendant-respondent herein) vide letter dated 07.06.2013 mentioning therein that a temporary room had been constructed illegally. After receiving the said notice, the plaintiff-appellant himself demolished the room. It was still further the case that in order to help the defendant-respondent, the E.O., U.T., Chandigarh passed order dated 07.06.2016 holding that the building violation was still existing on the spot and since the plaintiff-appellant was being threatened by the defendant-respondent that he would forcibly take the possession of the suit property, hence, the present suit.

6. In the written statement various preliminary objections were raised on the grounds of concealment of material facts, non-joinder of necessary parties etc. It was averred that the suit property was allotted to Kartar Singh in the year 1976 and since then he was in possession of the same till 07.08.2006. After his death, his son, namely, Manjit Singh (the brother of

the defendant-respondent) was in possession and he paid all the dues to the Chandigarh Administration as and when demanded. The last payment was made by him on 06.11.2008. Thereafter, the brother of the defendant-respondent fell ill due to a Kidney issue, and he could not manage his daily affairs. In the year 2010 the defendant-respondent approached the Chandigarh Administration for inheritance of rights and came to know about the illegal possession of the plaintiff-appellant over the suit property. It was further stated that in the year 1995 a lease deed was entered into between the Chandigarh Administration and Kartar Singh (predecessor-in-interest of the defendant-respondent herein) and two affidavits were submitted by Kartar Singh (predecessor-in-interest of the defendant-respondent herein) stating therein that possession of the suit property was given to him in February 1987, however, no token of handing over the possession was issued. Hence it was crystal clear that the plaintiff-appellant was not in possession of the suit property since the year 1992 as averred in the suit. It was denied that the plaintiff-appellant was in adverse possession of the suit property and stated that the criteria of adverse possession was not fulfilled. Counterclaim was also filed along with the written statement seeking ejectment of the plaintiff-appellant from the suit property and also *mense* profits @ ₹40,000 per month with interest @ 9% per annum from three years prior to the counterclaim.

7. Rejoinder was filed. On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the plaintiff is entitled for permanent injunction as prayed for ? OPP

2. Whether the suit of the plaintiff is not maintainable ? OPD
3. Whether the plaintiff has not come to the Court with clean hands ? OPD
4. Whether the plaintiff is entitled for possession of house in question being illegally trespassed by plaintiff, as claimed for ? OPD
5. Whether the defendant is entitled to *mesne* profits @ ₹40,000 per month along with interest, as prayed for ? OPD
6. Relief.

8 Vide impugned judgment and decree dated 25.07.2018 the suit filed by the plaintiff-appellant was dismissed and the counterclaim of the defendant-respondent was partly allowed, and the defendant-respondent was held entitled for possession of House No.551, Milk Colony, Dhanas, Chandigarh. The plaintiff-appellant was directed to restore the possession of the suit property within a period of three months from the date of the judgment and decree. Aggrieved by the same, two appeals were preferred - one by the plaintiff-appellant and one by the defendant-respondent (counterclaimant). Vide common judgment and decree dated 16.12.2024 both the appeals were dismissed. Hence, the present regular second appeal by the plaintiff-appellant.

9. Learned counsel for the plaintiff-appellant would contend that before the First Appellate Court an application for additional evidence was filed seeking to place on record the legal notice dated 27.10.1995 and the reply

dated 13.11.1995 to the legal notice as also an agreement to sell dated 16.11.1992. The said application was dismissed by the learned First Appellate Court. It is further the contention the said documents reveal that an agreement to sell had been entered into between the parties and therefore the First Appellate Court erred in dismissing the said application. The second argument of the learned counsel for the plaintiff-appellant is that the plea of adverse possession had been raised by the plaintiff-appellant clearly stating that he was in uninterrupted and peaceful possession of the suit property since 1992 and no steps were taken by the defendant-respondent to get the possession of the same. Learned counsel would further contend that the electricity bills in the name of Amrik Singh, who is the brother of the plaintiff-appellant, were produced on record as Ex.P-1 and Ex.P-2 and there were water bills also pertaining to the suit property which were produced on the record as Ex.P-3 to Ex.P-5 and copy of the voter card as Ex.P-6 which have all not been considered by the Courts in its true prospective. In support of his arguments, learned counsel for the plaintiff-appellant has relied upon the judgments passed by the Hon'ble Supreme Court in the cases of **Amrendra Pratap Singh V/s Tej Bahadur Prajapati & Ors. [(2004) 10 SCC 65]**, **Karnataka Board of Wakf V/s Government of India & Ors. [(2004) 10 SCC 779]** and **Krishnamurthy S. Setlur (Dead) through Legal Representatives V/s O.V. Narasimha Setty (Dead) by Legal Representatives & Ors. [(2020) 12 SCC 244]**.

10. *Per contra*, learned counsel for the defendant-respondent has pointed out that initially the case set up by the plaintiff-appellant in the plaint

was that the predecessor-in-interest of the defendant-respondent, namely, Kartar Singh had taken a friendly loan and since he could not repay the loan, possession of the suit property was handed over as a security to the plaintiff-appellant, who thereafter refused to hand over the possession back, admittedly, stating that there was no question of compromise since he had now become the owner of the suit property. It is further the contention of the learned counsel that there was no averment regarding any agreement to sell having been entered into between the parties. Learned counsel has further pointed out that without there being any pleading, the application under Order 41 Rule 27 CPC was rightly dismissed. It is still further the contention of the learned counsel that though a plea of adverse possession was raised, however, the same could not be raised since the property is a lease hold property which was allotted to the predecessor-in-interest of the defendant-respondent and the true owner is U.T. Chandigarh. Learned counsel has further contended that even the ingredients of adverse possession were not proved as held by the learned First Appellate Court. In support of his arguments, learned counsel for the defendant-respondent has relied upon the judgments of the Hon'ble Supreme Court in the cases of **Dagadabai V/s Abbas [(2017) 13 SCC 705]**, **Ravinder Kaur Grewal V/s Manjit Kaur [(2019) 8 SCC 729]**.

11. Heard.

12. In the present case, initially, the suit was filed by the plaintiff-appellant raising the plea that the property was given as security when Kartar Singh (predecessor-in-interest of the defendant-respondent) could not repay the loan. Subsequently in 1995 when the predecessor-in-interest of the

defendant-respondent did approach the plaintiff-appellant to repay the loan, the plaintiff-appellant refused to accept the same. Infact, in para No.6 of the plaint it was specifically stated that Kartar Singh (predecessor-in-interest of the defendant-respondent herein) after 16.11.1992 came many a times for settlement but it was the plaintiff-appellant who himself refused to settle the dispute. Yet again it had been stated in para No.6 of the plaint that on 05.05.1996 Kartar Singh (predecessor-in-interest of the defendant-respondent herein) came to the spot and was once again told by the plaintiff-appellant that no settlement was possible as he was now the owner in possession of the suit property and since Kartar Singh (predecessor-in-interest of the defendant-respondent herein) never tried to enforce his rights, therefore, he had become owner of the suit property by way of adverse possession.

13. The Hon'ble Supreme Court in the case of **Dagadabai V/s Abbas [(2017) 13 SCC 705]** has held as under :

“15. Third, the plea of adverse possession being essentially a plea based on facts, it was required to be proved by the party raising it on the basis of proper pleadings and evidence. The burden to prove such plea was, therefore, on the defendant who had raised it. It was, therefore, necessary for him to have discharged the burden that lay on him in accordance with law. When both the courts below held and, in our view, rightly that the defendant has failed to prove the plea of adverse possession in relation to the suit land then such concurrent

findings of fact were unimpeachable and binding on the High Court.

16. Fourth, the High Court erred fundamentally in observing in para 7 that, “it was not necessary for him (defendant) to first admit the ownership of the plaintiff before raising such a plea”. In our considered opinion, these observations of the High Court are against the law of adverse possession. It is a settled principle of law of adverse possession that the person, who claims title over the property on the strength of adverse possession and thereby wants the Court to divest the true owner of his ownership rights over such property, is required to prove his case only against the true owner of the property. It is equally well settled that such person must necessarily first admit the ownership of the true owner over the property to the knowledge of the true owner and secondly, the true owner has to be made a party to the suit to enable the Court to decide the plea of adverse possession between the two rival claimants.

17. It is only thereafter and subject to proving other material conditions with the aid of adequate evidence on the issue of actual, peaceful, and uninterrupted continuous possession of the person over the suit property for more than 12 years to the exclusion of true owner with the

element of hostility in asserting the rights of ownership to the knowledge of the true owner, a case of adverse possession can be held to be made out which, in turn, results in depriving the true owner of his ownership rights in the property and vests ownership rights of the property in the person who claims it.

18. In this case, we find that the defendant did not admit the plaintiff's ownership over the suit land and, therefore, the issue of adverse possession, in our opinion, could not have been tried successfully at the instance of the defendant as against the plaintiff. That apart, the defendant having claimed the ownership over the suit land by inheritance as an adopted son of Rustum and having failed to prove this ground, he was not entitled to claim the title by adverse possession against the plaintiff."

Further, the Hon'ble Supreme Court in the case of **Ravinder Kaur Grewal V/s Manjit Kaur [(2019) 8 SCC 729]** *inter alia* held as under:

"60. The adverse possession requires all the three classic requirements to co-exist at the same time, namely, nec vi i.e. adequate in continuity, nec clam i.e. adequate in publicity and nec precario i.e. adverse to a competitor, in denial of title and his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know

notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it. Adverse possession cannot be decreed on a title which is not pleaded. Animus possidendi under hostile colour of title is required. Trespasser's long possession is not synonymous with adverse possession. Trespasser's possession is construed to be on behalf of the owner, the casual user does not constitute adverse possession. The owner can take possession from a trespasser at any point in time. Possessor looks after the property, protects it and in case of agricultural property by and large the concept is that actual tiller should own the land who works by dint of his hard labour and makes the land cultivable. The legislature in various States confers rights based on possession."

The evidence led by the plaintiff-appellant to prove his adverse possession were the electricity bills (Ex.P-1 and Ex.P-2) which were in the name of Amrik Singh.

14. In order to fill in the lacunae, an application has now been filed before this Court being CM-6115-C-2025 under Order 41 Rule 27 CPC for leading additional evidence and for placing on record Annexures A-2 to A-5 which are ration cards pertaining to the family of Jarnail Singh (the plaintiff-appellant herein) and Mohinder Singh wherein Amrik Singh, in whose name the electricity bills were issued, is reflected as being a resident of House No.511, Milk Colony, Dhanas, Chandigarh. Annexure A-4 and A-5 are the

electricity bills in the name of Amrik Singh. Learned counsel for the plaintiff-appellant, while relying upon the said documents, has contended that Amrik Singh was one of the residents of the premises and hence the electricity bills were generated in his name. The said argument deserves to be rejected inasmuch as a reading of the plaint, a copy of which has been handed over by the learned counsel for the plaintiff-appellant to the Court, reveals that there is no averment in the entire plaint that Amrik Singh was also the resident of the suit property. The other documents appended with the application under Order 41 Rule 27 CPC would also not come to the aid of the plaintiff-appellant inasmuch as they all have been appended in order to show that Amrik Singh was the resident of the suit property. However, in the absence of any pleadings, no amount of evidence can be looked into. In view of the above, the application being CM-6115-C-2025 under Order 41 Rule 27 CPC for additional evidence is dismissed and the argument of the learned counsel for the plaintiff-appellant is rejected.

15. Further in order to show and prove adverse possession, water bills Ex.P-3 to Ex.P-5 were produced as also Ex.P-6 which is the voter identity card. However, none appeared before the Court to prove the said documents and mere photocopies of the documents were tendered by PW-1. In the absence of the said documents having been proved it cannot be ascertained as to from when the plaintiff-appellant had been in adverse possession as alleged. As referred above, as per the judgment of the Hon'ble Supreme Court in the case of **Ravinder Kaur Grewal** (supra) wherein it has been held that adverse possession requires all the three requirements to co-exist at the same time i.e.

adequate in continuity, adequate in publicity and adverse to a competitor in denial of title and his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis of that but for due diligence he would have known it. It was further held that a trespasser's long possession is not synonymous with adverse possession and that a true owner can take possession from a trespasser at any point of time. In the absence of any evidence fulfilling the requirements of proof of adverse possession, no fault can be found with the impugned judgments and decrees passed by both the Courts concerned.

16. The argument of the learned counsel regarding there being an agreement to sell in his favour, also deserves to be rejected, as discussed above, there is not even a whisper in the entire plaint regarding any agreement to sell. In the absence of any pleadings, no amount of evidence can be looked into.

17. The judgments relied upon by the learned counsel for the plaintiff-appellant would also not come to his aid as there is no quarrel with the proposition of law laid down therein, however, the same are totally distinguishable on facts.

18. In view of the above, I do not find any merit in the present regular second appeal. No question of law, much less any substantial question of law, arises for determination in the present case. The appeal being devoid of any merits is accordingly dismissed. Pending applications, if any, also stand disposed off.

14.07.2025
Aman Jain

(ALKA SARIN)
JUDGE

*NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO*