

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

I. RSA-1910-1996

Bikar Singh and Others Appellants

Vs.

State of Haryana and Others Respondents

II. RSA-1911-1996

Sukhdev Singh and Others Appellants

Vs.

State of Haryana and Others Respondents

Reserved on: 29.10.2025
Pronounced on: 04.11.2025

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

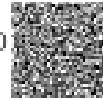
Argued by:- Mr. Kartar Singh, Advocate
for the appellants.

Mr. Gaurav Garg, AAG, Haryana.

Mr. Ashok Verma, Advocate
for respondent Nos.9 and 10.

DEEPAK GUPTA, J.

These two Regular Second Appeals are directed against the judgments and decrees dated 23.02.1996 passed by the first Appellate Court of learned Additional District Judge, Sirsa, whereby appeal of the defendants N: 1 to 3 was allowed, and the suits for declaration filed by plaintiffs (*appellants herein in both the appeals*) were dismissed, reversing the decrees dated 01.06.1992 passed by trial Court of Ld. Additional Senior Sub Judge, Dabwali, in favour of the plaintiffs – *appellants herein*.



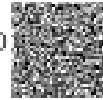
2. Facts of both the cases are similar. Date of judgments passed by Trial Court and Appellate Court are same. Respective Presiding Officers in both courts are same. For convenience, Factual matrix is noted from RSA N: 1910-1996 titled 'Bikkar Singh & Others vs. State of Haryana & Others.' arising out of Civil Suit N: 316 of 1988. Other RSA N: 1911-1996 titled 'Sukhdev Singh & Others vs. State of Haryana & Others' has arisen out of Civil Suit N: 312 of 1988.

3. For clarity, the parties shall be referred to as per their status before the Trial Court. The photocopy of the Trial Court record was called and has been duly perused.

4.1 The plaintiffs filed a suit for declaration and permanent injunction asserting that the father of defendants No. 4 to 7 namely, Hakam Singh, had been cultivating the land described in paragraph 1 of the plaint (old khasra numbers in village Ganga) since 1857 as an occupancy tenant and that on the enforcement of the *Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952*, said Hakam Singh became owner of the land. During consolidation, new khasra numbers were allotted, and Hakam Singh's ownership continued in respect of 71 kanal 8 marla.

4.2 It is alleged that in January 1957, Nand Singh (*father of the present plaintiffs - appellants*) dispossessed Hakam Singh and took cultivating possession. Since then, he and, after his death, the plaintiffs have continuously, peacefully, and openly possessed the land as owners, hostile to the title of Hakam Singh and others. The plaintiffs therefore claimed ownership by adverse possession.

4.3 Plaintiffs further pleaded that defendants Balbir Kaur and Kishan Kaur wrongly declared the land as their surplus holding under the *Haryana Ceiling on Land Holdings Act, 1972*. The Prescribed Authority, Dabwali, by order dated 30.03.1988, declared the suit land as surplus in their hands without



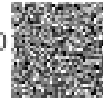
notice to the plaintiffs, who were in possession. The plaintiffs asserted that the order is illegal, void, and without jurisdiction, and not binding upon them.

4.4 Subsequently, the Allotment Authority, Dabwali, vide order dated 20.05.1988, allotted the land to defendants No. 9 to 11. The plaintiffs contended the said allotment to be is void, as defendants 9 to 11 were not residents of village Ganga, were not landless agricultural workers, and were otherwise ineligible under the Haryana Utilisation of Surplus and Other Areas Scheme, 1976. They also alleged that that defendants No. 1 to 3 – State Authorities were threatening dispossession on the strength of those void orders.

4.5 Alternatively, the plaintiffs pleaded that if their ownership by adverse possession is not accepted, they should be treated as tenants in possession since before 1957, thereby entitled to allotment of the land under the Utilisation Scheme. Having failed to secure acknowledgment of their rights, they prayed for declaration of ownership and possession by setting aside of the orders dated 30.03.1988 and 20.05.1988 to the extent of the suit land, and permanent injunction restraining defendants No. 1 to 3 from interfering with their possession.

5.1 Defendants No. 1 to 3 (State of Haryana etc.) denied the plaintiffs' claim and pleaded that the plaintiffs or their predecessor were not in cultivating possession since 1957, nor had they acquired ownership by adverse possession. They assert that 59 kanal 8 marla out of the suit land (described in specified rectangles and killa numbers) had been rightly declared surplus on 30.03.1988 and validly allotted to eligible persons (defendants No. 9 to 11) under the *Utilisation Scheme* by order dated 20.05.1988. The remaining 12 kanal was not declared surplus. They asserted both orders as legal, valid, and binding and also raised some preliminary objections.

5.2 Defendants No. 4 to 7 admitted that their father, Hakam Singh, was an occupancy tenant who became owner under the 1952 Act, but denied the



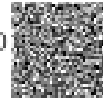
other allegations. They claimed that after Hakam Singh's death, they being his heirs, became owners and that defendants No. 4 and 5 continue to cultivate the land. The plaintiffs, according to them, never possessed the land in any capacity and have no locus standi to sue. They alleged that the plaintiffs had procured false revenue entries in collusion with Balbir Kaur (defendant No. 8) and her son Sukhdev Singh. They also disputed the validity of the surplus and allotment orders but asserted their own entitlement to allotment as persons in cultivating possession.

5.3 Defendant No. 11 separately denied the plaintiffs' possession and asserted that the land was rightly allotted to him under the *Utilisation Scheme*, as he fulfilled the eligibility conditions, and that he is presently in possession as owner. He also raised some additional legal objections.

5.4 Defendants No. 8 to 10, despite service, failed to appear and were proceeded ex parte.

6. In their replications, the plaintiffs reaffirmed their pleadings and denied the contentions of the contesting defendants.

7. ***Findings of Trial Court:*** Upon framing of issues and appraisal of the evidence led by both sides, the learned trial Court held that Balbir Kaur was not competent to declare the suit land as surplus in her hands, nor was the Prescribed Authority, Dabwali, competent to declare it as such. It further held that the plaintiffs had become owners in possession of the suit land in equal shares by adverse possession. The Court concluded that since the order dated 30.03.1988, declaring the suit land as surplus, was illegal and void, the subsequent allotment order dated 20.05.1988 was also illegal, null and void. It was held further that the civil court had jurisdiction to try the suit; and that the suit was within limitation. With these findings, the trial Court decreed the suit with costs, declaring the plaintiffs as owners in possession of the suit land in



equal shares, and that the orders dated 30.03.1988 and 20.05.1988 passed by the Prescribed and Allotment Authorities, Dabwali, respectively, were illegal, null and void, and not binding upon the plaintiffs. The defendants were further restrained from interfering with the plaintiffs' possession over the suit land or from allotting it to any other person.

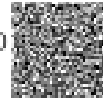
8. Aggrieved by this judgment and decree, defendants No. 1 to 3 preferred the appeal. The first appellate court re-appraised the evidence and held that plaintiffs possession was not adverse to the true owner and so, reversed the finding of trial court in this regard. Further, the orders dated 30.03.1988 and 20.05.1988 passed by the Prescribed and Allotment Authorities, Dabwali, respectively, were held to be legal and valid. Jurisdiction of civil court to try this suit was also held to be barred by Section 26 of the Ceiling Act. Accordingly, judgment and decree dated 1.6.1992 of learned trial Court were set aside and suit of the plaintiffs was dismissed.

9. Assailing the above reversal, learned counsel for the appellants contended that the First Appellate Court failed to properly appreciate the revenue record, and has wrongly set aside judgment & decree of Trial Court.

7. After hearing learned counsel for the parties and examining the record, this Court finds no merit in the appeal.

8. The plaintiffs' entire case rests on their alleged acquisition of ownership through adverse possession. The trial Court accepted this plea primarily on the basis of oral evidence, disregarding the consistent revenue record. Such an approach is legally untenable.

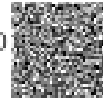
9. The law is well settled that title by adverse possession cannot rest merely upon the oral assertions of a few witnesses. Were it otherwise, ownership of immovable property could be easily unsettled, undermining the sanctity of proprietary rights. As rightly observed by the first appellate court, when documentary evidence such as Jamabandi and khasra Girdawari entries



exist, they must prevail over oral testimony, as per Section 91 and 92 of the *Indian Evidence Act, 1872*, which bar oral contradiction of written public records. Oral evidence is relevant only where documentary proof is unavailable and even then must be of unimpeachable credibility. The trial Court's reliance on uncorroborated oral evidence to confer ownership by adverse possession, contrary to long-standing revenue entries showing tenancy of plaintiffs on 1/3rd batai, is, therefore, has been rightly held to be clearly erroneous.

10. The plaintiffs themselves produced jamabandis from 1920-21 to 1982-83 (Ex. P-7 to P-21, P-23, P-28) and khasra girdawaris from 1957-58 to 1987-88 (Ex. P-22, P-24 to P-27). However, far from supporting their claim, these documents completely negate their plea of adverse possession. Jamabandis from 1920-21 to 1962-63 (Ex. P-7 to P-19) consistently record Hakam Singh in possession of the suit land. It is only in the jamabandi for 1962-63 that Nand Singh (plaintiffs' father) and Puran Singh (his brother) first appear as occupants. Hence, the plaintiffs' assertion that Nand Singh took possession in January 1957 stands contradicted by official record. Hakam Singh's possession extended continuously from before 1920-21 up to 1962-63, and the entry of Nand Singh thereafter cannot relate back to 1957. Counting from 1962-63, the possession of the plaintiffs or their predecessor did not complete the requisite twelve years of continuous hostile possession before the *Haryana Ceiling on Land Holdings Act, 1972* came into force on 24 January 1971. Consequently, the claim of ownership by adverse possession fails on the test of limitation as well.

11. Still further, Jamabandis (Ex. P-20, P-21, P-23, P-28) for 1967-68 to 1982-83 record the possession of Nand Singh and Puran Singh as tenants on 1/3rd batai, not as owners in adverse possession. These consistent entries over several decades carry a statutory presumption of correctness under Section 44 of the *Punjab Land Revenue Act, 1887*, and the presumption remains unrebutted. Hence, the long-standing revenue record conclusively proved that Nand Singh's possession, and consequently that of the plaintiffs, was as

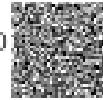


cultivating tenants liable to pay 1/3rd batai. Adverse possession being inconsistent with a recognized tenancy, the plea of ownership by adverse possession is legally unsustainable.

12. The argument that no batai was ever paid is of no avail. Even if actual payment is not proved, the liability to pay rent as reflected in revenue entries establishes the juridical relationship of tenancy, not hostility. The mere omission or failure to pay rent does not convert permissive or derivative possession into adverse possession unless there is open repudiation of the landlord's title, which is absent here. Reliance by appellants on ***Joginder Pal v. Angad Singh, 1983 PLJ 14***, is misplaced, because, in that case, the initial entry of the plaintiff was as a tenant, and the Court held that mere non-payment of rent could not convert permissive possession into adverse possession.

13. Furthermore, the plaintiffs cannot selectively rely on parts of the defendants' version suggesting non-payment of batai, while ignoring their categorical denial of the plaintiffs' possession. The revenue record, being contemporaneous and official, outweighs such self-serving oral statements.

14. The trial Court's heavy reliance on oral evidence is misplaced. Plaintiff Kikar Singh (PW-1) deposed that his father took possession forcibly in January 1957; yet, on the date of his deposition in 1989, he was only 37 years old, meaning he was barely five years old in 1957. His testimony is thus hearsay and cannot establish an event of which he had no personal knowledge. The other witnesses, Gurdev Singh (PW-2), Mukhtiar Singh (PW-3), and Madan Lal (PW-4), merely made general statements that Nand Singh cultivated the land since 1957. Their statements lack documentary corroboration and are easily procured. None of them possessed special credibility; indeed, PW-3 admitted being a collateral relative of the plaintiffs, rendering him an interested witness.



15. On the other hand, Jagga Singh (DW-2) and Major Singh (DW-3) for the defendants categorically denied any possession of the plaintiffs, and their evidence stands more consistent with official records.

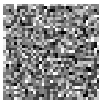
16. Accordingly, the oral evidence adduced by the plaintiffs is unreliable and insufficient to displace the presumption of correctness of long-standing revenue entries.

17. Apart from above, another infirmity in the plaintiffs' case as rightly noticed by the first appellate court is the non-impleadment of Smt. Kishan Kaur, recorded as owner of 12 kanals (non-surplus) portion of the suit land. Adjudicating ownership of her land without her presence **violates** Order I Rule 9 CPC, rendering the suit defective for non-joinder of a necessary party. Relief in respect of that portion could not have been granted in her absence.

18. Thus, the possession of the plaintiffs and their predecessor was not adverse but permissive and as tenants. They have failed to prove any hostile assertion of ownership. Once it is held that the plaintiffs were not owners by adverse possession, their further plea that the **surplus area order dated 30.03.1988** was void for want of notice loses force. The plaintiffs had no locus to be heard in the proceedings under the Ceiling Act.

19. The record shows that Balbir Kaur (defendant No. 8) was the recorded owner of 59 kanal 8 marla, and the surplus declaration was made after hearing her through her representative Sukhdev Singh. Neither Hakam Singh nor his heirs were entitled to notice, as his ownership had ceased post-1962-63. No appeal or challenge was filed by them or the plaintiffs thereafter. Thus, the order of the Prescribed Authority passed after due process has been rightly found to be legal, valid, and binding.

20. No other point was urged.



21. In all the above circumstances, the findings of the First Appellate Court in setting aside the judgment and decree of the trial Court call for no interference. No illegality or perversity is made out.

22. Consequently, finding no merit in the appeals, the same are dismissed.

Pending application(s), if any, also stands disposed of.
A photocopy of this order be placed on the connected case file.

(DEEPAK GUPTA)
JUDGE

04.11.2025
Neetika Tuteja

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