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

RSA-3295-2019 (O&M)

Date of Decision : 27.08.2025

KIRPAL SINGH

.... Appellant

VERSUS

SURENDER MOHAN AND ANR

.... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Vaibhav Jain, Advocate for the appellant.

ALKA SARIN, J. (ORAL)

1. The present appeal has been filed by the defendant-appellant challenging the judgments and decrees dated 16.07.2015 and 15.02.2019 passed by the Trial Court and the First Appellate Court respectively decreeing the suit of the plaintiff-respondents and dismissing the appeal of the defendant-appellant.

2. Brief facts relevant to the present *lis* are that the one Gian Devi widow of Hem Raj resident of Village Bhirdana, Fatehabad was owner in possession of land measuring 12 Kanal 0 Marla bearing Khasra Nos.149//4 (8-0) 5 min. East (4-0) situated at Village Bhirdana, Fatehabad as per jamabandi for the year 1989-90. She appointed her son, namely, Ashwani Kumar as her general power of attorney vide registered document No.277 dated 22.01.1985 registered at the office of Sub-Registrar, Fatehabad. Sale Deed No.1218 dated 30.06.1997 was executed by Ashwani Kumar regarding the abovesaid land measuring 12 Kanal 0 Marla in favour of Surender Mohan

for a sum of ₹1,27,500 and physical possession was also delivered to the vendee, namely, Surender Mohan and its mutation No.5710 dated 13.10.1997 was sanctioned in his name. It was further the case set up that vide decree dated 17.01.1998 passed in Civil Suit No.721 of 1997, Surender Mohan transferred 6 Kanal 2 Marla land bearing Khasra No.649//4 min (6-2) in favour of his mother, namely, Mathra Devi and its mutation No.5744 was sanctioned on 10.03.1998. Mathra Devi further transferred 6 Kanal 2 Marla land in favour of one Pawan Kumar vide mutation No.5745 dated 07.04.1998. Thereafter, Surender Mohan transferred the remaining land measuring 5 Kanal 18 Marla bearing Khasra No.149//4/2 (1-18) 5/1 (4-0) situated at Village Bhirdana, Fatehabad in favour of his mother, namely, Mathra Devi on the basis of oral exchange vide mutation No.5753 dated 29.04.1998. Thus, Mathra Devi was owner in possession of land measuring 5 Kanal 18 Marla. During her lifetime, Mathra Devi executed a Will dated 22.03.2002 bearing No.260 by virtue of which she bequeathed the suit land in favour of plaintiff-respondents in equal shares. After the death of Mathra Devi on 24.12.2012, the plaintiff-respondents inherited the suit land in equal shares on the basis of the Will. It was further averred in the plaint that the defendant-appellant had no right or interest in the suit land however he managed to get the entries in the Khasra Girdawari changed in his favour illegally and unauthorizedly in connivance with the revenue authorities vide Rapat No.545 dated 01.05.2003. It was further the case set up that the defendant-appellant never remained in possession of the suit land and that Kirpal Singh manipulated the sale deed bearing No.2380 dated 24.11.1999 allegedly executed by Gian Devi to her

general power of attorney Ashwani Kumar regarding total land measuring 33 Kanal 16 Marla. It was further the case that Civil Suit No.319-C of 2009 was filed seeking declaration qua ownership of the land and challenging the validity of sale deed No.1218 dated 30.06.1997 and decree dated 17.01.1998 and mutations No.5745 dated 07.04.1998, 6625 and 5753. Said suit was dismissed vide judgment and decree dated 23.05.2011. About one year back, the defendant-appellant has illegally and unauthorizedly occupied the suit land for which he has no right. Hence, the suit.

3. On notice, the defendant-appellant appeared and filed his written statement raising various preliminary objections regarding non-joinder and mis-joinder of necessary parties, no cause of action, no locus standi, suppression of true and material facts etc. It was the stand taken by the defendant-appellant that Gian Devi had alienated the suit land with other land measuring 33 Kanal 16 Marla bearing Khasra No.149//6 (8-0), 7 (8-0), 3/3/2 (1-16), 4 (8-0), 5 (8-0) situated at Village Bhirdana, Fatehabad vide jamabandi for the year 1994-95. The defendant-appellant had also purchased land measuring 91 Kanal 12 Marla and land measuring 1 Kanal 11 Marla, which is 31/328 share of total land measuring 16 Kanal 8 Marla in Village Bhirdana, from Gian Devi and her family members. Sale deed No.2380 dated 24.11.1999 was executed on behalf of Sunil Kumar, general power of attorney of Gian Devi for land measuring 33 Kanal 16 Marla. The defendant-appellant came from Sonapat where his land had been acquired. Pritam Singh, his brother is residing in Village Bhirdana and he persuaded him to purchase the land and on his recommendation the defendant-appellant had purchased the

land. However, said Pritam Singh kept him in the dark and got the mutation of sale deed No.2380 dated 24.11.1999 only of land measuring 21 Kanal 16 Marla and did not disclose the deficiency in land to the defendant-appellant. Said Pritam Singh also obtained general power of attorney of the defendant-appellant on 20.05.2002 for management of the land without his consent and he filed an application by showing the defendant as owner-in-possession of land bearing Khasra No.149//4/2 (1-18), 4/1 (6-2), 5/1 (4-0) measuring 12 Kanal, subject matter of sale deed No.2380 dated 24.11.1999. Then, he amended the application and the defendant-appellant was shown as tenant at will on 1/3rd *Batai* and got the name of the defendant-appellant changed in it whereas he was not a tenant over the suit land. Till 17.11.2006, Pritam Singh kept him in dark and when he came to know about his intention, he got the general power of attorney cancelled. Further plea of adverse possession was also raised.

4. Replication was not filed. On the basis of the pleadings of the parties, the following issues were framed :

1. Whether the plaintiff is entitled to a decree for possession of the suit property, as prayed for ? OPP
2. Whether the suit of the plaintiff is not maintainable ? OPD
3. Whether the plaintiff has no cause of action and *locus standi* to file the present suit ? OPD
4. Relief.

5. The defendant-appellant - Kirpal Singh - appeared as DW-1 however he chose not to lead any evidence. The Trial Court vide judgment and decree dated 16.07.2015 decreed the suit. Aggrieved by the same an appeal was preferred by the defendant-appellant which appeal was dismissed by the First Appellate Court vide judgment and decree dated 15.02.2019. Hence, the present regular second appeal by the defendant-appellant.

6. The sole argument of the learned counsel for the defendant-appellant is that the defendant-appellant had become owner by way of adverse possession. It is further the contention of the learned counsel that no finding was returned by the Trial Court and the First Appellate Court dismissed the appeal holding that the claim of adverse possession was not proved.

7. Heard learned counsel and perused the record.

8. The Hon'ble Supreme Court in the case of **Dagadabai V/s Abbas [(2017) 13 SCC 705]** has laid down the following principles governing the adverse possession :

'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.'

In Ravinder Kaur Grewal V/s Manjit Kaur [(2019) 8 SCC 729] it was *inter alia* held that :

'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'.

9. In the present case though a plea was raised by the defendant-appellant that he was in adverse possession of the suit land, however, no issue was claimed regarding the same. Further still, there is not an iota of evidence lead by the defendant-appellant in support of his claim that he was in adverse possession of the suit land. In the case of **Dagadabai** (supra) the Hon'ble Supreme Court has held that the plaintiff has to show that he is in continuous possession which is adverse to the true owner. In the absence of any evidence having been led by the defendant-appellant, no fault can be found with the impugned judgments and decrees passed by both the Courts concerned.

10. In view of the above, I do not find any merit in the present 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.

27.08.2025

Aman Jain

(ALKA SARIN)

JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No