

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****116****RSA-4875-2019 (O&M)****Reserved on : 20.03.2025****Pronounced on : 08.04.2025**

Parma Nand and Another

....Appellants

**VERSUS**

Smt. Rajpal Kaur and Others

....Respondents

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Ms. Garima Modi, Advocate for  
Mr. Gourav Jain, Advocate for the appellants.

**ALKA SARIN, J.**

1. The present appeal has been preferred by the defendant Nos.2 and 3 (defendant-appellants) challenging the judgment and decree dated 24.03.2015 passed by the Trial Court and the judgment and decree dated 22.05.2018 passed by the First Appellate Court whereby the suit of the plaintiff-respondent Nos.1 and 2 (plaintiff-respondents) for prohibitory and mandatory injunctions was decreed.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondents filed the suit averring that vide sale deed dated 22.07.2008 they purchased land measuring 9 Marlas comprised in Khasra No.166/17 situated at Basti Bhiwan, Tehsil and District Fatehabad (DC Colony Fatehabad) from Joginder Singh and Chhabil Dass. Out of the said purchased land in Khasra No.166//17 the plaintiff-respondents are in possession of plot marked ABCD and the defendants have no concern with the said plot. However, while raising construction on land adjacent to land in Khasra No.166//17 the defendants had also started raising construction over the plot marked ABCD

without any right, title or interest therein. Hence, the suit for prohibitory and mandatory injunction. The suit was contested by defendants who filed a written statement raising preliminary objections of maintainability, cause of action, locus standi, not coming to court with clean hands etc. On merits it was the stand taken that the defendants are in possession of Plot Nos.20, 21, 22 purchased by them from Jugal Kishore and it did not matter in which khasra number the aforesaid plots of the defendants are situated as each plot holder in DC Colony is exclusive owner of the plot purchased by him or each plot holder is to be treated as co-sharers in total land of DC Colony comprised in Khasra Nos.339//11, 12, 19/1, 19/2, 20, 21, 22, 25, 340//13, 14, 15, 16, 17, 18 situated in Fatehabad and Khasra Nos.166//17, 18, 19, 20, 21, 22, 23, 24, 25 situated in Basti Bhiwan and that the plaintiff-respondents could not be treated as co-sharers only in Khasra No.166//17 due to a wrong description in their sale deed. It was pleaded that the plaintiff-respondents had no concern with the ownership and possession of the suit land and that the defendants had raised construction on their plots in 1998 and were in open, peaceful, continuous possession and had become owners of the suit land by lapse of the statutory period of 12 years.

3. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiffs are entitled to relief of permanent injunction ? OPP
2. Whether the plaintiffs are entitled to the relief of mandatory injunction as prayed for ? OPP
3. Whether the suit of the plaintiffs is not maintainable in the present form ? OPD

4. Whether the plaintiffs have no cause of action or locus standi to file the present suit ? OPD

5. Whether the plaintiffs have suppressed the material facts from the knowledge of the court ? OPD

6. Relief.

4. The Trial Court vide judgment and decree dated 24.03.2015 decreed the suit of the plaintiff-respondents holding that they had proved their ownership of the suit land. Aggrieved by the decision of the Trial Court, an appeal was preferred by the defendant Nos.2 and 3 i.e. the defendant-appellants which appeal was also dismissed by the First Appellate Court vide judgment and decree dated 22.05.2018. Hence, the present regular second appeal by the defendant Nos.2 and 3 i.e. the defendant-appellants.

5. The learned counsel for the defendant-appellants has contended that both the Courts have erred in decreeing the suit of the plaintiff-respondents. It is urged that the defendant-appellants purchased their plots in DC Colony and that the sale deeds of DC Colony did not mention any khasra numbers but only plot numbers and that the suit land was part of the plots purchased by the defendant-appellants. It is contended that the plaintiff-respondents had no right over the suit land that the defendant-appellants had become owners by adverse possession and therefore the suit deserved to be dismissed.

6. Heard.

7. In the present case both the Courts have found that the sale deeds in favour of the defendant-appellants were for land in Khasra Nos.166//18 and 19 and not in Khasra No.166//17, in which the suit land is

situated, and in none of the sale deeds were any plot numbers mentioned. Only specific khasra numbers out of which the land was sold were mentioned. In none of the sale deeds were any plot numbers mentioned. The plaintiff-respondents purchased the suit land vide sale deed Ex.P1 and the mutation Ex.P7 was also sanctioned in their favour. The plaintiff-respondents also established the title of their vendor.

8. Learned counsel has also not been able to show any evidence on the record to substantiate his plea of adverse possession. Though it has been argued that the defendant-appellants have been in possession of the suit land for the last more than 12 years, however, there is not an iota of evidence on the record to show the possession of the defendant-appellants. Rather, none of the ingredients of adverse possession has been proved.

9. In **Dagadabai vs. Abbas [(2017) 13 SCC 705]** the Supreme Court held inter-alia 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."*

10. In **Ravinder Kaur Grewal vs. 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."*

11. In the present case the defendant-appellants have failed to lead any substantial evidence to prove the plea of adverse possession. Counsel for the defendant-appellants has not been able to refer to any cogent evidence, oral or documentary, led by the defendant-appellants to prove that their possession was *nec vi, nec clam, nec precario*, i.e. peaceful, open and continuous. A person seeking to establish his adverse possession has to show that his possession is adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.

12. In the present case there is no credible evidence available on the record which would prove the stand as taken by the defendant-appellants. Learned counsel for the defendant-appellants has failed to point out as to how the concurrent findings recorded by both the Courts are erroneous or perverse. No cogent and reliable evidence has been shown to the Court by the learned counsel which would establish that the plots of the defendant-appellants are in the same khasra number as the suit land or that they had

perfected their title by adverse possession. This Court finds no reason to differ from the findings returned by both the Courts. No other point was argued.

13. In view of the discussion above, no question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

08.04.2025  
jk

**( ALKA SARIN )**  
**JUDGE**

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