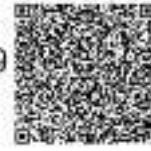


2025:PHHC:023099



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

**RSA-15013-2018 (O&M)**  
**Reserved on : 07.02.2025**  
**Pronounced on : 18.02.2025**

Kanhi Ram & Ors.

....Appellants

**VERSUS**

Banwari Lal & Ors.

....Respondents

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

Present : Mr. Rohit Mittal, Advocate for the appellants.

**ALKA SARIN, J.**

**CM-19434-C-2018 & CM-19436-C-2018**

1. For the reasons mentioned therein, the applications seeking condonation of 101 days delay in refiling the appeal and condonation of 51 days delay in filing the appeal are allowed. The delay of 101 days delay in refiling the appeal and the delay of 51 days delay in filing the appeal is condoned.

**RSA-15013-2018**

2. The present appeal has been preferred by the defendant Nos.2, 3 and 4 (defendant-appellants) challenging the judgment and decree dated 24.10.2013 passed by the Trial Court and the judgment and decree dated 20.12.2017 passed by the First Appellate Court.

3. Brief facts relevant to the present *lis* are that the plaintiff-respondent Nos.1 and 2 filed a suit for possession and permanent injunction.

It was averred that Jagan Nath Vyas, and his son Shankar Lal Vyas were

biswedars and owners of the entire land of village Shimli and had given their agricultural land to various persons for cultivation and the land within abadi to various persons for residential purposes. It was further averred that the forefathers of the plaintiff-respondent Nos.1 and 2 were given land comprised in Khasra No.254/212/3 for residential purpose which during consolidation was allotted Khasra No.57. The ancestors of the plaintiff-respondent Nos.1 and 2 had constructed a house over some portion of the suit land while the open land was used for tethering cattle. It was averred that the defendants had, in collusion with the revenue officials, got their names recorded against 3 marlas of the suit land and had also constructed a wall and installed a gate to which they had no right. Hence, the suit. In the written statement the defendants raised preliminary objections of maintainability, locus standi, valuation and limitation. On merits it was that denied that Shankar Lal Vyas or his ancestors owned the entire land of village Shimli or had given their agricultural land to various persons for cultivation and the land within abadi to various persons for residential purposes. It was denied that the suit land was given to the ancestors of the plaintiff-respondent Nos.1 and 2 or that they were in possession. According to the defendants the suit land adjoined their own property and the defendants had been using the 3 marlas for approaching the main Rasta. According to the defendants in 1971 the entry in their favour in the revenue record was made after a site visit by the Patwari. Ownership of the suit land by way of adverse possession was claimed by the defendants. Replication was filed denying the averments made in the written statement and reiterating those made in the plaint.

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

1. Whether plaintiffs are entitled for possession of the suit land as alleged in the plaint ? OPP
2. Whether plaintiffs are entitled for relief of injunction as prayed for ? OPP
3. Whether the present suit is not maintainable ? OPD
4. Whether the plaintiffs have no locus standi to file the present suit ? OPD
5. Whether present suit is bad for want of non-joinder and mis-joinder of necessary parties ? OPD
6. Whether the defendants are entitled to special costs under Section 35A CPC from the plaintiffs ? OPD
7. Relief

5. The Trial Court vide judgment and decree dated 24.10.2013 decreed the suit of the plaintiff-respondent Nos.1 and 2. Aggrieved by the decision of the Trial Court, an appeal was preferred by all the defendants including the defendant-appellants. The said appeal was dismissed by the First Appellate Court vide judgment and decree dated 20.12.2017. Hence, the present regular second appeal by the defendant-appellants. 2 out of the 5 defendants have not filed the present appeal.

6. The learned counsel for the defendant-appellant has contended that both the Courts have erred in decreeing the suit of the plaintiff-respondent Nos.1 and 2. It is urged that during consolidation the father of the plaintiff-

respondent Nos.1 and 2 had got his name inserted in the column of possession against the suit land so in 1971 the ancestor of the defendant-appellants had approached the Patwari who, after a spot inspection, had corrected the entry and entered it in his favour. According to the counsel, the plaintiff-respondent Nos.1 and 2 had no right, title or interest in the suit land. It is further submitted that even if the defendant-appellants had forcibly and illegally occupied 3 marlas of the suit land, the possession of the defendant-appellants was open, hostile, continuous, without payment of rent to anybody, to the knowledge of general public including the plaintiff-respondent Nos.1 and 2 for the last more than 12 years and therefore the defendant-appellants had become owners by adverse possession.

7. Heard.

8. In the present case both the Courts have refused to accept the plea that the defendant-appellants were in possession of the suit land. Rather, it has been found that the plaintiff-respondent Nos.1 and 2 were in possession but the defendant-appellants had occupied 3 marlas. Further, the change in revenue record in favour of the ancestor of the defendant-appellants was carried out without issuing any notice to the person whose name was being sought to be removed i.e. the ancestor of the plaintiff-respondent Nos.1 and 2. The other submissions made by counsel for the defendant-appellants are on the plea of adverse possession which has been negated by both the Courts. For raising a plea of adverse possession, a defendant has to admit the ownership of the plaintiff.

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.”*

**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."*

10. Viewed in the light of the settled law applicable to adverse possession, this Court finds that the defendant-appellants miserably failed to make out a case in their favour. In the face of the findings recorded by both the fact finding Courts, there is no scope for any interference by this Court. No cogent and reliable evidence has been highlighted by the counsel for the defendant-appellants for this Court to take a contrary view from the one taken

by both the Courts. In view thereof, no fault can be found with the findings returned by both the Courts concerned. No other point was argued.

11. 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.

**18.02.2025**

*Aman Jain*

**(ALKA SARIN)  
JUDGE**

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