IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RSA No. 280 of 2024.

Decided on :27th April, 2026.

Ram Pal & another **...Appellants.**

Versus

Mehar Chand & Others **....Respondents.**

Coram:

The Hon'ble Mr. Romesh Verma, Judge.

Whether approved for reporting?[1]

For the Appellants: Mr. Amrinder Singh Rana, Advocate.

For the Respondents: Mr. P.S. Goverdhan, Senior Advocate with Mr. Rakesh Thakur, Advocate.

Romesh Verma, Judge (Oral).

The present appeal arises out of the judgment and decree, as passed by learned Additional District Judge, Nalagarh, District Solan, H.P. dated 27.08.2024, whereby the appeal filed by the present appellant was dismissed and the judgment and decree, as passed by learned Civil Judge, Court No.2, Nalagarh, District Solan, H.P., dated 08.01.2023, was affirmed whereby the

[1] Whether reporters of the local papers may be allowed to see the judgment?

suit filed by the respondents/plaintiffs for possession and permanent prohibitory injunction was decreed.

2. The brief facts of the case are that the respondents/plaintiffs filed a suit for possession and permanent prohibitory injunction on the ground that the suit land is measuring 0-3 biswas bearing tatima Khasra No. 360/2, out of Khasra No.360 (5 Bighas 16 Biswas), comprised in Khata/Khatauni Nos. 108/124 min, situated in the area of Village Kaundi, Pargana Dharampur, Tehsil Nalagarh, District Solan, Himachal Pradesh. It has been contended in the plaint that the plaintiffs are absolute owners of total land measuring 5 bighas 16 biswas, bearing Khasra No. 360 and defendants have forcibly, illegally and in malafide manner encroached upon the suit land to the extent of 0-3 biswas, The said encroachment was done by defendants despite knowing that the plaintiffs are owners of the suit property. The Tehsildar, Baddi demarcated the land of the plaintiffs on 30.06.2024 in the presence of defendants and other persons including adjoining land owners. In the said demarcation, it was found that the defendants have unauthorisedly encroached upon

0-3 biswas of land out of khasra No. 360. The said revenue officer prepared the tatima of the encroached area which has been shown by the demarcating officer as tatima khasra No. 360/2 in his report.

3. Pursuant to the demarcation, request was made to the defendants to handover the vacant possession of the suit land as they are absolute owner owners of the same. However, the defendants, who are adamant, refused to handover the vacant possession of the suit land to the plaintiffs and further threatened to encroach upon the remaining part of khasra No. 360 forcibly and illegally and to change the nature and character of the suit land i.e. land measuring 0-3 biswas, bearing tatima khasra No. 360/2, out of Khasra No.360(5 bighas 16 biswas), comprised in Khata/Khatauni Nos. 108 min/124 min, situated in Village Kundi, Pargana Dharampur, Tehsil Nalagarh, District Solan, H.P. Further, decree for permanent prohibitory injunction, restraining the defendants from interfering in any manner, changing nature, character and raising construction over the suit land was also sought for by the plaintiffs against the defendants.

4. The suit was contested by the defendant by filing written statement raising preliminary objections with respect of maintainability, cause of action and locus standi etc. On merits, it was averred that the defendants are in possession 0-3 biswas area comprised in tatima Khasra No. 360/2, out of Khasra No.360, total measuring 5 bighas, 16 biswas. That the possession of the defendants is peaceful and adverse within the knowledge of plaintiffs and their predecessor-in-title. It has been averred that the predecessor-in-title of the plaintiffs, Shri Kirpu and Smt. Harnami, were previous owners of the suit property and Shri Hari Ram Predecessor-in-title of the defendants entered into possession of the suit property about 70 years ago and built a house over the same and he remained in possession of the suit property within the knowledge of Shri Kirpu and Smt. Harnami, who never raised objection.

5. That the predecessor-in-title of the defendants have set up their own title over the suit property, denying the tile of predecessor-in-title of the plaintiffs and the defendants have raised double storied building on the suit property to which no

objection was raised either by the plaintiff or their predecessor-in-title as they admitted the defendants to be owners-in-possession of the suit property. It has been further averred that the possession of the defendants is adverse, open and hostile to the knowledge of plaintiffs and their predecessor-in-title, therefore, they have acquired title to the suit property. All the averments as made in the plaint were refuted by the defendants and sought the dismissal of the suit.

6. The plaintiffs have filed the replication to the written statement filed by the defendants and all the averments made in plaint were reiterated and that of the written statement were denied.

7. Learned trial Court on 04.08.2015, framed the following issues:-

> "1. Whether the plaintiffs are entitled for possession of a part of the suit land measuring 0-3 biswas, denoted by Khasra No. 360/2, as prayed for? OPP.
>
> 2. Whether the plaintiffs are also entitled for relief of permanent prohibitory injunction, as prayed for? OPP.

3. Whether the suit is not maintainable in the present form? OPD.
4. Whether the plaintiffs have no cause of action to file the present suit against the defendants? OPD.
5. Whether the plaintiffs are guilty of suppressio-veri, if so, its effect? OPD.
6. Whether the defendants have perfected their title to a part of suit land, comprised in Khasra No. 360/2, by way of adverse possession? OPD.
7. Relief."

8. Learned trial Court directed the respective parties to adduce evidence in support of their contentions and finally, vide its judgment and decree dated 08.01.2019, the suit filed by the plaintiff was decreed by passing a decree for possession in favour of the plaintiffs and against the defendants for vacant possession of the suit land, measuring 0-3 biswas bearing tatima Khasra No. 360/2, out of Khasra No.360 (5 Bighas 16 Biswas), comprised in Khata/Khatauni Nos. 108/124 min, situated in the area of Village Kaundi, Pargana Dharampur, Tehsil Nalagarh, District Solan, Himachal Pradesh. Further, a decree of permanent prohibitory injunction was also passed in favour of the plaintiffs and against the defendants restraining them from interfering in any manner,

changing nature, character and raising construction over the suit land.

9. Feeling dissatisfied, the defendants/appellants preferred an appeal under Section 96 of the CPC before the Court of learned Addl. District Judge, Nalagarh, District Solan, H.P. ON 08.02.2019. Learned first appellate Court vide its judgment dated 27.08.2024 dismissed the appeal preferred by the appellants/defendants.

10. Still feeling aggrieved, the defendant has preferred the present regular second appeal.

11. With the consent of the parties the appeal is finally heard at the admission stage.

12. It is contended by Mr. Amrinder Singh Rana, learned counsel for the appellants/defendant that the judgments and decrees passed by the learned Courts below are erroneous and are liable to be quashed and set aside. He has further submitted that the defendants/appellants have acquired the title by adverse possession and, therefore, the decree for vacant possession of the suit land could not have been passed in favour of the

plaintiffs/respondents. He has further contended that the possession of the present appellant is long and hostile for the last more than 70 years. Therefore, by virtue of adverse possession, the appellants have acquired the title and submitted that after accepting the present appeal, the suit as preferred by the present respondents/plaintiffs deserves to be dismissed.

13. On the other hand, Mr. P.S. Goverdhan, learned senior counsel for the respondents/plaintiffs has defended the impugned judgments and decrees passed by the learned Courts below. He has further submitted that the findings of fact recorded by both the learned courts below do not call for any interference. He has further submitted that the plea of adverse possession has been dealt with by the learned courts below elaborately and after taking into consideration the oral and documentary evidence placed on record. The defendants have failed to plead and prove the adverse possession, therefore, the present appeal deserves to be dismissed.

14. The respondents/plaintiffs have also filed an application under Section 151 of the CPC for fixation and recovery

of use and occupation charges against the present appellants. In the application, it has been prayed that the present appellants may be directed to pay use and occupation charges of the suit land measuring 3 biswas @ Rs.30,000/- per month (rental value of the suit property @ Rs.10,000/- per biswas) along with interest @ 12 % per annum, payable from the date of decree i.e. 08.01.2019 passed by the learned Senior Civil Judge, Nalagarh, till handing over the vacant possession of the suit land in favour of the applicants/plaintiffs.

15. Though, notices were issued in the said application to the appellants/non-applicants by the Court on 11.11.2025 and the learned counsel for the appellants/non-applicants had sought time to file reply to the aforesaid application. Thereafter, the case was listed on 05.12.2025, 22.12.2025 and 06.03.2026, but till date no reply to this application is filed.

16. At this stage, learned counsel for the respondents on instruction does not press the application (CMP No. 23752 of 2025) seeking liberty to avail appropriate liberty for the redressal of their

grievance before the competent court of law. Ordered accordingly.

17. Now coming to the merits of the case, the plaintiffs/respondents have filed the suit for possession on the basis of title and for grant of permanent prohibitory injunction against the defendants. In order to substantiate their contention, the plaintiffs have placed on record EX.PW1/A, copy of the demarcation report, which has been given by the Assistant Collector First Grade, Baddi. The demarcation was carried out by Assistant Collector on 30.06.2014 and after conducting the same, he came to the conclusion that on the suit land bearing Khasra No. 360, the appellants have encroached to the extent of 0-3 biswas. The said report has been proved by PW-1, Shri Keshav Ram. He has entered into the witness box by stating that on 30.06.2014, he went to the suit land bearing Khasra No.360. That on the said date, both the parties including the plaintiffs and the defendants, were present. That both the parties had appended their signatures and the demarcation was conducted, copy of the same is EX.PW1/A. He has stated that the order as passed by him on

30.06.2014 is EX.PW1/B and the Naksha Tafawat EX.PW1/C. He has further stated that with respect to the demarcation both the parties were made aware and on the spot present defendants/appellants had raised no objection.

18. PW-2 is Mehar Chand. He in his deposition has stated that the suit land consists of 0-3 biswas and its tatima khasra No. is 360/2 and my self and my brother are co-sharers of the aforesaid land and that the defendants/appellants out of the total land measuring 5 bighas and 16 biswas, has illegally and without any authority has encroached upon 0-3 biswas, which is illegal. It has been stated by PW-2 that the said fact was strongly objected by the plaintiffs that no construction should be raised by the plaintiffs on their land. However, the defendants failed to accede to their requests and that in order to ascertain the encroachment, the application was filed before the Tehsildar, Baddi, who visited the spot on 30.06.2014 and submitted his report. In the said report, it was found that the defendants have encroached upon the suit land. He has further stated that since the defendants have illegally encroached upon the suit land, therefore, he

submitted that the decree for possession be passed in their favour and the defendants be restrained from interfering in the suit land in any manner. Though, PW-2 Mehar Chand was thoroughly cross-examined but nothing concrete could be extracted by the defendant in the cross-examination of the said witness. He has categorically denied that during the raising of construction, the predecessors-in-interest of the plaintiffs did not raise any objection. It was further denied that the defendants are owner of the suit property.

19. In order to rebut the case of the plaintiffs, the defendants examined DW-1 Ram Nath, retired Kanungo, in order to prove the site plan, Ex. D-1, which has been placed on record. In cross-examination, he has admitted that he did not obtain the signatures of defendant Jaspal etc. He has further stated that at time of preparation of Ex. D-1, he did not call the revenue officer including the Patwari. He has admitted that when the site plan was prepared neither he was possessing the copy of musabi nor he was having the copy of jamabandi at the relevant time. He has

admitted that land of the Jaspal is adjacent to the land of Mehar Chand and others.

20. DW-2 is the testimony of Jeet Ram. He has stated in his deposition that since his childhood he is seeing the possession of the defendants and the constructed house of the defendants on the suit land. That the plaintiff never objected to the said construction and the plaintiffs were never dispossessed from the suit land and that the defendants deemed themselves to be owner of the suit property and the said witness is seeing the possession of the defendants since his childhood and the same is continuous and uninterrupted.

21. DW-3 is the testimony of Lacchman. He has also deposed in line with the testimony of DW-2 Jeet Ram. DW-4 is the testimony of defendant Jaspal. In the affidavit Ex.DW4/A, he has stated that they are in possession of the suit property since the time of their ancestors and that they have raised construction since the time immemorial. He has further stated that they have become owner of the suit property by virtue of long possession and that the plaintiffs never objected the possession of the

defendant and they continuously coming in possession of the suit property without any obstruction or interruption. That the defendants never accepted the plaintiffs to be owner in possession of the suit property.

22. Perusal of the written statement as filed by the defendants shows that as per the averments as made in the same, the defendants have taken the defence that they are in possession of 3 biswas of land out of the total land measuring 5 bighas, 16 biswas, comprised in Khasra No. 360/2 and the said possession is peaceful and adverse to the knowledge of the plaintiffs. It has been averred in the written statement that the defendants have entered into the suit property about 70 years ago and they remained in possession of the suit property to the knowledge of the predecessors-in-title of the plaintiffs. Further, it has been stated that the defendants have set up their title and denied the title of the predecessors-in-title of the plaintiffs and the defendants have raised double storeyed building on the suit property.

23. Both the learned Courts below concurrently held that the defendants have failed to prove and plead the necessary ingredients to claim the title on the basis of adverse possession and they were non suited by holding that the plaintiffs have filed the suit for recovery of possession on the basis of title.

24. Hon'ble Apex Court in ***Vasantha (dead) through legal representative vs. Rajalakshmi alias Rajam (dead) through legal representatives, (2024)5 SCC 282***, has held that a person who claims adverse possession should show; (a) on what date he came into possession; (b) what was the nature of his possession; (c) whether the factum of possession was known to the other party; (d) how long his possession has continued: and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour since he is trying to defeat rights of true owner, it is for him to clearly plead and establish all facts necessary to prove his adverse possession.

25. Adverse possession is a right which comes into play not just because someone loses his right to reclaim the property out of continuous and willful neglect but also on account of

possessor's positive intent to dispossess. Therefore, it is important to take into account before stripping somebody on his lawful title, whether there is an adverse possessor worthy and exhibiting more urgent and genuine desire to dispossess and step into the shoes of the owner of the property on paper. The intention is a mental element which is proved and disproved through positive acts. Existence of some events can go a long way to weaken the presumption of intention to dispossess, which might have painstakingly grown out of long possession which otherwise would have sufficed in a standard adverse possession case. The fact of possession is important in more than one ways; firstly, due compliance on this court attracts the Limitation Act and it also assists the court to unearth the intention to dispossess.

26. The intention to dispossess needs to be open and hostile enough to bring the same to the knowledge and the plaintiff has an opportunity to object. After all adverse possession right is not a substantive right but a result of the waiving or omission of the right to defend or care for the integrity of property on the part of the owner of the property on paper. Adverse

possession statutes, like other statues of limitation, rest on a public policy that does not promote litigation and aims at the repose of conditions that the parties have suffered to remain unquestioned long enough to indicate their acquiescence. Intention implies knowledge on the part of adverse possessor.

27. The issue is that intention of the adverse user gets communicated to the owner of the property on paper. This is where the law gives importance to hostility and openness as pertinent qualities of manner of possession. It follows that the possession of adverse possessor must be hostile enough to give rise to a reasonable notice and opportunity to the owner of the property on paper. Intention to possess cannot be substituted for intention to dispossess which is essential to prove adverse possession. Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law.

28. The Hon'ble Supreme Court has laid down the exposition of law qua adverse possession in the following manner:

(i) In ***T. Anjanappa and others vs. Somalingappa and another, (2006) 7 SCC 570***, the Hon'ble Supreme Court held as under:

> *"12. The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property.*

13. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them.

> *"24. It is a matter of fundamental principle of law that where possession can be referred to a lawful title, it will not be considered to be adverse. It is on the basis of this principle that it has been laid down that since the possession of one co- owner can be referred to his status as co-owner, it cannot be considered adverse to other co-owner.*

14. Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of the rightful owner and tends to extinguish that person's title. Possession is not held to he adverse if it can be referred to a lawful title. The person setting up adverse possession may have been holding under the rightful Owner's title e.g. trustees, guardians, bailiffs or agents. Such persons cannot set up adverse possession.

> *"Adverse possession" means a hostile possession which is expressly or impliedly in denial of title of the true owner. Under Article 65 of the Limitation Act, burden is on the defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a*

person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed.

Where possession could be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all.

15. An occupation of reality is inconsistent with the right of the true owner. Where a person possesses property in a manner in which he is not entitled to possess it, and without anything to show that he possesses it otherwise than an owner (that is, with the intention of excluding all persons from it, including the rightful owner), he is in adverse possession of it. Thus, if A is in possession of a field of B's, he is in adverse

possession of it unless there is something to show that his possession is consistent with a recognition of B's title. (See Ward v. Carttar (1866) LR 1 Eq.29). Adverse possession is of two kinds, according as it was adverse from the beginning, or has become so subsequently. Thus, if a mere trespasser takes possession of A's property, and retains it against him, his possession is adverse ab initio. But if A grants a lease of land to B, or B obtains possession of the land as A's bailiff, or guardian, or trustee, his possession can only become adverse by some change in his position. Adverse possession not only entitled the adverse possessor, like every other possessor, to be protected in his possession against all who cannot show a better title, but also, if the adverse possessor remains in possession for a certain period of time produces the effect either of barring the right of the true owner, and thus converting the possessor into the owner, or of depriving the true owner of his right of action to recover his property and this although the true owner is ignorant of the adverse possessor being in occupation.

16. xxx xxx xxx

17. According to Pollock, "In common speech a man is said to be in possession of anything of which he has the apparent control or from the use of which he has the apparent powers of excluding others".

18 & 19 xxx xxx xxx

20. It is well recognized proposition in law that mere possession however long does not necessarily means that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action."

(ii) In ***Chatti Konatri Rao and others vs. Palle Venkata Subba Rao, (2010) 14 SCC 316***, the Hon'ble Apex Court further held as under:

"13. What facts are required to prove adverse possession have succinctly been enunciated by this Court in the case of Karnataka Board of Wakf vs. Government of India and Ors. (2004) 10 SCC 779. It has also been observed that a person pleading adverse

possession has no equities in his favour and since such a person is trying to defeat the rights of the true owner, it is for him to clearly plead and establish necessary facts to establish his adverse possession. Paragraph 11 of the judgment which is relevant for the purpose reads as follows:

> *"11. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be 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. (See S.M. Karim v. Bibi Sakina AIR 1964 SC 1254, Parsinni v. Sukhi (1993) 4 SCC 375 and D.N. Venkatarayappa v. State of*

Karnataka (1997) 7 SCC 567) Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. [Mahesh Chand Sharma (Dr.) v. Raj Kumari Sharma

14. In view of the several authorities of this Court, few whereof have been referred above, what can safely be said that mere possession however long does not necessarily mean that it is adverse to the true owner. It means hostile possession which is expressly or impliedly in denial of the title of the true owner and in order to constitute adverse possession the possession must be

adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The possession must be open and hostile enough so that it is known by the parties interested in the property. The plaintiff is bound to prove his title as also possession within 12 years and once the plaintiff proves his title, the burden shifts on the defendant to establish that he has perfected his title by adverse possession. Claim by adverse possession has two basic elements i.e. the possession of the defendant should be adverse to the plaintiff and the defendant must continue to remain in possession for a period of 12 years thereafter.

15. Animus possidendi as is well known a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until possessor holds property adverse to the title of the true owner for the said purpose. The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and possession was open and undisturbed. A person pleading adverse possession has no equities in his favour as he is trying to defeat the rights of the true owner and, hence, it is for him to clearly plead and establish all facts necessary to establish adverse possession. The courts always take unkind view towards statutes of limitation overriding property rights. Plea of

adverse possession is not a pure question of law but a blended one of fact and law."

29. The Hon'ble Supreme Court in its various decisions has held that when there are concurrent findings of fact, the High Courts should not interfere in those findings until and unless those are perverse or without any evidence. In the present case plea as set up by the defendant was required to be proved by the defendant, however, he has failed to do so.

30. The pleadings as set up by the present appellants/defendants do not fulfill the parameters as laid down by the Hon'ble Apex Court in order to acquire the title on the basis of adverse possession. Neither there is any averment in the written statement that on which date the defendants came into possession of the suit property. Nor it has been mentioned that what is nature of possession and whether the factum of said possession was known to other side. The ingredients that the possession of the defendants was open and undisturbed have also not been proved in the present case. The Courts below has rightly came to the conclusion that the onus to prove the plea of adverse possession was necessarily on the defendants but the

said plea though has been taken but the defendants has failed to prove the same. Plea of possession always taken against a true owner. Meaning thereby, the defendants have admitted the title of the plaintiffs. Once, the defendants have failed to prove the plea of adverse possession in that event the only order which could have been passed is decree for vacant possession of the suit land in favour of the plaintiffs. Therefore, the Courts below has rightly determined the oral and documentary evidence placed on record and has rightly decreed the suit of the plaintiff filed on the basis of title and decree for injunction.

31. No question of law much less the substantial question of law arises for determination in the present appeal, therefore, the present appeal being devoid of any merits is dismissed. Pending applications, if any, also stand disposed of.

(Romesh Verma)
Judge

27th April, 2026.
(jai)