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

RSA-1079-2021 (O&M)

Date of Decision : 04.02.2026

DALWINDER SINGH AND ANR

.... Appellants

VERSUS

JAGDIP SINGH

.... Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. A.P. Kaushal, Advocate for the appellants.

ALKA SARIN, J. (ORAL)

1. The present regular second appeal has been preferred by the defendant-appellants challenging the judgment and decree dated 07.02.2017 passed by the Trial Court and the judgment and decree dated 02.11.2020 passed by the First Appellate Court.

2. Brief facts relevant to the present *lis* are that the plaintiff-respondent herein filed a suit for permanent injunction for restraining the defendant-appellants from interfering in his peaceful possession and from cutting the Mango trees and from forcibly and illegally dispossessing him. The case as set up by the plaintiff-respondent in the plaint was that the plaintiff-respondent was residing in Village Mahilpur from the time of his forefathers and has landed property in Village Fagon, Tehsil Garhshankar, District Hoshiarpur. His father expired on 17.05.2004 and after his death the plaintiff-respondent came in possession as owner of whole of the property situated in Village Fagon. The father of the plaintiff-respondent prior to his

death had entered into an agreement to sell on 09.04.1997 with defendant-appellant No.1. In the said agreement specific boundaries and dimensions were mentioned and was regarding the property situated in Khasra No.54, Khewat No.16/24 Village Fagon. After receiving the full and final consideration, the possession was delivered to defendant-appellant No.1 and since then defendant-appellant No.1 was in possession. After the death of the father of the plaintiff-respondent, the defendant-appellants tried to encroach upon the suit property. When the plaintiff-respondent tried to stop them, the defendant-appellants got into a verbal spat with the plaintiff-respondent. It was further stated that the plaintiff-respondent was still in possession of the suit property. It was also alleged that defendant-appellant No.2 along with some other persons had tried to cut and remove the mango trees. Hence, the suit.

3. Notice of the suit was given to the defendant-appellants who appeared and filed written statement. Objections were filed stating that the site plan attached to the plaint is incorrect and not identical to the khasra numbers of the suit property as mentioned in the revenue record. On merits, *inter alia*, it was the stand taken that the plaintiff-respondent was not owner of whole of the property situated in Village Fagon and that defendant-appellant No.1 was the owner in possession of land measuring 2 Kanal 2 Marla comprised in Khata No.15/23 Khasra No.193(4-0), 201(1-16) situated in Village Fagon as per the registered sale deed dated 09.04.1997. It was further the stand taken that the possession was delivered to him and the co-vendee, namely, Navjot Singh. It was further the case set up that they were in possession of the suit

property adverse to the plaintiff-respondent and the rights of the plaintiff-respondent in the suit property stood extinguished by lapse of time. It was further the stand that the possession of defendant-appellant No.1 had matured into ownership by way of adverse possession.

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 permanent injunction as prayed for ? OPP
2. Whether the plaintiff has not come to the court with clean hands and has suppressed material facts from the court ? OPD
3. Whether the site plan filed by the plaintiff is incorrect ? OPD
4. Whether the suit is not maintainable in its present form ? OPD
5. Whether suit is bad for misjoinder of necessary parties ? OPD
6. Whether the suit is without any cause of action ? OPD
7. Relief.

5. The Trial Court vide judgment and decree dated 07.02.2017 decreed the suit of the plaintiff-respondent restraining the defendant-appellants from illegally and forcibly interfering into the peaceful possession of plaintiff-respondent over the suit property and also from cutting the Mango

trees and from alienating the same. Aggrieved by the same an appeal was preferred by the defendant-appellants which appeal was dismissed by the First Appellate Court vide judgment and decree dated 02.11.2020. Hence, the present regular second appeal by the defendant-appellants.

6. Learned counsel for the defendant-appellants would contend that though the sale deed pertains to Khasra No.54 Khewat No.16/24 in Village Fagon, however, subsequently an agreement (Mark A2) was executed and actual possession of Khasra No.193 was given to the defendant-appellants. Learned counsel would further contend that the said document was admitted by the plaintiff-respondent in his cross-examination.

7. Heard.

8. In the present case the defendant-appellants in their written statement claimed that they were owners in possession of the property comprised in Khata No.15/23, Khasra No.193(4-0) and 201(1-16) which is the subject matter of the suit though admittedly the sale deed pertains to Khasra No.54, Khewat No.16/24. The stand taken by the defendant-appellants was that they had become owners of the said property by way of adverse possession.

9. At this stage, learned counsel for the defendant-appellants states that the possession was also claimed on the basis of document (Mark A2). On a query put by the Court as to whether any such plea was raised by the defendant-appellants in the written statement, learned counsel for the defendant-appellants has candidly admitted that no such stand was ever taken in the written statement.

10. The only stand taken by the defendant-appellants was that they were in possession, which was exclusive, hostile and adverse to the rights of the plaintiff-respondent. Once adverse possession is claimed, the defendant-appellants in effect admits the ownership of the plaintiff-respondent. Since the suit was for permanent injunction, the plaintiff-respondent had led cogent evidence to show that he was in possession of the suit property. Learned counsel has only relied upon the document (Mark A2) to contend that the defendant-appellants were in possession of the suit property. There is not an iota of evidence on the record to even remotely suggest that the defendant-appellants were in possession of the suit property except document Mark A2. Firstly, the said document is not an exhibited document. Secondly, the said plea was never raised in the written statement. It is trite that no amount of evidence can be looked into in the absence of pleadings and as such no reliance can be placed upon the said document Mark A2. Both the Courts concurrently found that there was no evidence regarding the claim of adverse possession. Infact, none of the ingredients of adverse possession were satisfied. In the absence of any cogent evidence to show that the defendant-appellants were in possession of the suit property, no fault can be found with the impugned judgments and decrees.

11. In view of the above, I do not find any merit in the present regular second 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 merit is accordingly dismissed. Pending applications, if any, also stand disposed off.

04.02.2026
Aman Jain

(ALKA SARIN)
JUDGE

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