

2026:PHHC:079906



(Pronouncement-6)
**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

RSA No. 1465 of 1993 (O&M)

Lichha (deceased) through LRs

..... Appellants

Versus

Karan Singh and others

..... Respondents

1	The date when the judgment was reserved	07.04.2026
2	The date when the judgment is pronounced	21.05.2026
3	The date when the judgment is uploaded on the website	22.05.2026
4	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full
5	The delay, if any, of the pronouncement of full judgment, and reasons thereof.	Not applicable

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Argued By:- Mr. Roopak Bansal, Advocate
for the appellants-LRs of defendant No. 1.

Mr. Abhilaksh Grover, Advocate with
Ms. Nandini Gupta, Advocate
for the respondents No. 1 to 5.

HARKESH MANUJA, J.

The legal representatives of defendant No. 1-Lichha are in appeal. First appeal filed by respondent Nos. 1 to 5-plaintiffs was allowed by the learned First Appellate Court while setting aside the judgment and decree passed by the learned trial Court. For the sake of convenience, the

parties are being referred to as per their status in the Civil Suit.

[2] Challenge has been laid to the judgment and decree dated 07.05.1993 passed by the Court of learned Additional District Judge, Sonapat (**hereinafter to be referred as “First Appellate Court”**), whereby an appeal filed by respondent Nos. 1 to 5-plaintiffs against the judgment and decree dated 01.05.1991 passed by the Court of learned Senior Sub Judge, Sonapat (**hereinafter to be referred as “trial Court”**), dismissing their suit for declaration, was allowed, thereby reversing the judgment and decree passed by the learned trial Court.

[3] Brief facts of the case are that the plaintiffs filed a suit for declaration that they are owners in possession of a plot described by letters ABCD in the site plan Ex.P-1 appended with the plaint and situated within the abadi of Mauza Kanwali, Tehsil & District Sonapat. It was pleaded that the aforesaid plot was purchased by Sh. Puna (since deceased), who happened to be the father of plaintiffs and husband of defendant No. 2-Smt. Kamla. The plot in dispute was purchased by Sh. Puna (since deceased) from one Risal Singh son of Meer Singh for a sale consideration of Rs. 800/- vide registered sale deed dated 14.03.1967. After the death of Sh. Puna, his surviving widow-defendant No. 2 (Smt. Kamla) and his sons and daughters (plaintiffs) inherited the same and became owners in possession of the suit land. It was further pleaded that later, defendant No. 1-Lichha, by exerting influence upon defendant No. 2-Smt. Kamla (mother of the plaintiffs), got the plot in dispute transferred in his name by making Smt. Kamla suffer a consent decree dated 08.02.1972 in his favour in Civil Suit No. 896/1, titled “*Lichha Versus Smt. Kamla*” from a Civil Court at Sonapat, therefore, it was

alleged that defendant No. 1-Lichha played a fraud upon their mother-Smt. Kamla to secure a decree from the Civil Court; the validity of the decree was challenged on the plea that the same was collusive and does not have any effect on their rights. It was also pleaded that after the death of Sh. Puna (father of plaintiffs), defendant No. 2-Smt. Kamla (widow of Sh. Puna) became owner in possession of the suit land only to the extent of 1/6th share and any transfer beyond her share was illegal and the decree suffered by her was void *ab initio*. Hence, the suit was filed.

[4] The suit was contested by defendant No. 1-Lichha, who in his written statement, *inter alia*, submitted that since Sh. Risal Singh was not ready to sell the plot in dispute to him, it was purchased in the name of Sh. Puna-father of plaintiffs (since deceased) he having paid the entire sale consideration; thus it was a benami transaction in the name of Sh. Puna. It was further averred that since the entire payment of the plot was made by defendant No. 1, he constructed a small kutchha boundary wall over there, which had fallen due to the rainy season and new wall was proposed to be raised. Further, the stand of defendant No. 1 was that Sh. Puna died after the purchase of plot in question and thereafter, his widow-defendant No. 2 (Smt. Kamla) while admitting his claim, transferred the ownership of plot in question in his (Lichha) name by means of a decree dated 08.02.1972 passed by a Civil Court at Sonapat. It was also pleaded that defendant No. 1 was in possession of the plot in dispute since the year 1967 and the plaintiffs had no possession over any part of the same and therefore, it was prayed that suit be dismissed.

[5] Defendant No. 2-Smt. Kamla, in her written statement, admitted the averments/pleadings made in the plaint.

[6] Replication was filed. On the basis of pleadings of the parties, the learned trial Court framed the following issues:-

- “1. *Whether the plaintiffs are owners in possession of the suit property as alleged ? OPP.*
2. *Whether the judgment and decree dated 8.2.1972 is liable to be set aside on the grounds mentioned in the plaint ? OPP.*
3. *Whether the defendant No. 1 has become owner by way of adverse possession of the suit property ? OPD.*
4. *Whether the plaintiffs have no locus standi to file the present suit ? OPD*
5. *Whether the plaintiffs are estopped by their own act and conduct from filing the present suit ? OPD*
6. *Whether the suit is not maintainable in the present form? OPD*
7. *Relief. ”*

[7] The learned trial Court, vide judgment and decree dated 01.05.1991, dismissed the suit filed at the instance of respondent Nos. 1 to 5-plaintiffs.

[8] Aggrieved against the same, respondent Nos. 1 to 5-plaintiffs filed the first appeal and during the arguments in appeal, the following additional issues were framed before the learned First Appellate Court:-

2. *Whether the impugned judgment and decree dated 8.2.1972 passed in civil suit No. 896/1 in case titled as Lichha vs. Kamla decided on 8.2.72 passed from the court of Sh. M.K. Bansal, Sub Judge Ist Class, Sonapat is illegal against law and facts qua the rights of the plaintiff and as such the same is not binding on them? OPP*

2-A *Whether late Mr. Puna was a benami holder (nominal owner) of the land in dispute on behalf of Lichha respondent and as such Smt. Kamla suffered a valid decree in favour of Lichha respondent No. 1, if so its effect ? OPD*

[9] Upon perusal of the evidence/material available on record, the learned First Appellate Court, vide judgment and decree dated 07.05.1993, allowed the appeal while reversing the judgment and decree passed by the learned trial Court, thereby decreeing the suit of plaintiffs and a declaration was given that the plaintiffs are joint owners in possession to the extent of 5/6th share with Lichha (defendant No. 1), who also become joint owner after the admission decree suffered by Smt. Kamla (defendant No. 2) in his favour.

CONTENTION(S):

ON BEHALF OF THE APPELLANT(S)-DEFENDANT NO. 1:

[10] Impugning the aforesaid judgment and decree dated 07.05.1993 passed by the learned First Appellate Court, learned counsel for the appellants-LRs of defendant No. 1 submitted that once, the defendant No. 1-appellant was found to be in exclusive possession of the suit property, simple suit for declaration at the instance of respondent Nos. 1 to 5-plaintiffs could not have been entertained and decreed, especially when they were not found to be in possession of even a part thereof and as such, they could not have been deemed to be in joint possession of the suit property.

[10.1] Learned counsel for the appellants further contended that defendant No. 1 was proved to be in long settled possession of the suit plot since the time of its purchase in the year 1967 besides having raised

construction over a part thereof which made his possession to be hostile towards the original owners, as such, the plea of adverse possession raised by the appellant-defendant No. 1 was to be accepted.

[10.2] Learned counsel also contended that once in the written statement filed in the previous suit at the hands of defendant No. 2-Smt. Kamla, the purchase of the subject property by her husband being of *benami* nature was admitted, even the consent decree passed therein was binding on the plaintiffs.

[10.3] Learned counsel for the appellants further submitted that the suit in hand was preferred in the year 1985 seeking declaration *qua* judgment and decree dated 08.02.1972 passed in the previous suit and as such, the suit was clearly barred by limitation and thus, the same was liable to be dismissed.

No other argument was raised on behalf of the appellants.

ON BEHALF OF THE RESPONDENTS:

[11] Learned counsel for the respondents submitted that once the decree dated 08.02.1972 passed in the previous suit was in the absence of plaintiffs, the same was not binding upon them *qua* their 5/6th share therein and as such, they were, at best, co-owners / joint owners in the suit property alongwith defendant No. 1-appellant and as such, they were rightly recorded to be held in joint possession.

[11.1] Learned counsel for the respondents further submitted that the admission made by defendant No. 2-Smt. Kamla (mother of the plaintiffs) in the written statement filed in the previous suit was not binding on the plaintiffs as they were all minor at that point in time and were not even

impleaded as party in the earlier suit; nor even through their mother. Thus, it was contended that the suit been filed within three years of attaining the majority by respondent No. 1 was thus within limitation.

[11.2] Learned counsel for the respondents also contended that once, the possession of defendant No. 1 over the suit property was on the basis of decree dated 08.02.1972, the same, being of permissive nature, with the consent of defendant No. 2 could never fructify into adverse possession and thus, the said suit was rightly rejected by the learned trial Court.

No other argument was raised on behalf of the respondents

DISCUSSION AND REASONING

[12] Having heard learned counsel for the parties and gone through the paper-book / record, I am unable to find substance in the submission(s) made on behalf of the appellant(s).

[13] Admittedly, the original owner Risal Singh sold the suit property in favour of Puna (since deceased) vide registered sale deed dated 14.03.1967, for a sale consideration of Rs. 800/-. As per records in the previous suit, the plea taken by the appellant-defendant No. 1 was that the name of Puna in the sale deed dated 14.03.1967 was a result of mistake, whereas in the present suit, it was pleaded by him in his defence that the subject property was consciously purchased in the name of Puna as the original owner, namely Risal Singh was not ready to sell the same in favour of the appellant-defendant No. 1. Thus, in view of the aforementioned inconsistent, plea(s) taken by the appellant himself in the two suits, his plea of the sale dated 14.03.1967 being a *benami* transaction in the name of Puna was not established and accordingly, it needs to be recorded that by virtue of

sale deed dated 14.03.1967 in his favour, Puna became exclusive owner in possession of the suit property and after his death, the same devolved upon the plaintiffs as well as their mother-defendant No. 2 (Smt. Kamla) in equal shares by way of inheritance regarding which even mutation Exhibit P-5 was entered. Pertinently, any admission made in the previous suit by the mother of the plaintiffs with respect to the sale transaction dated 14.03.1967, in the name of Puna being a *benami* transaction was never binding on their rights *qua* the subject property, especially when they were not even impleaded as parties in the said suit.

[14] In view of the above discussion, the judgment and decree dated 08.02.1972 passed in favour of the appellant in a suit, wherein the wife of Puna was the only defendant and none of the plaintiffs who had 5/6th share in the subject property been impleaded as party; nowhere affected their rights. Accordingly at best, vide judgment and decree dated 08.02.1972, the appellant became owner to the extent of 1/6th share in the suit property with the plaintiffs being co-sharers to the extent of 5/6th share. In such circumstances, the parties being joint owners, the appellant and the remaining co-owners were to be treated in joint possession of the suit property. **Be that as it may**, in order to prove his exclusive possession over the subject property, the appellant led evidence with respect to his tethering of cattles or placing of agricultural implements over the suit property; which in the wake of settled proposition of law was not to be termed as proof of exclusive possession, and in such circumstances, the possession of vacant plot had to go with the ownership, and accordingly the plaintiffs being the co-owners were to be treated in joint possession of the subject property. As

such, in the given facts and circumstances, simple suit for declaration in the absence of any prayer for specific possession *qua* the suit property was duly maintainable in law.

[15] Further, there was no merit in the contention raised on behalf of the appellant(s), where in the alternate, the appellant-defendant No. 1 was claiming himself to have become owner of the suit property on the basis of adverse possession, especially when his exclusive possession was never established. Furthermore, the basis of appellant claiming himself to be in exclusive possession of the suit property was either the sale deed dated 14.03.1967 or at best the judgment and decree dated 08.02.1972, which was thus in any case to be treated as permissive possession. Besides it, the appellant-defendant No. 1 never even pleaded or proved the basic necessary ingredients of adverse possession in his favour.

[16] As regards the plea raised on behalf of the appellant(s) regarding suit for declaration preferred at the instance of respondent Nos. 1 to 5-plaintiffs being barred by limitation, the same is devoid of merits. In the present case, admittedly the respondent(s)-plaintiffs were never impleaded as party to the previous suit, which culminated into passing of the judgment and decree dated 08.02.1972 in favour of the appellant-defendant No. 1. Further, the appellant-defendant No. 1 was not even able to establish his exclusive possession over the subject property and as such, the cause of action to seek declaration *qua* the suit property accrued only when their possession was sought to be disturbed by the appellant-defendant No. 1 as pleaded in the suit and, therefore, the suit filed at the instance of plaintiffs could not be held to be barred by limitation.

[17] In view of the discussion made hereinabove, finding no illegality or perversity with the findings of the fact recorded by the learned First Appellate Court, there being no ignorance or any mis-interpretation pointed out towards the pleadings and the evidence available on record; the present appeal, being devoid of merits, is hereby **dismissed**, while upholding the judgment and decree dated 07.05.1993 passed by the learned First Appellate Court and setting aside the judgment and decree dated 01.05.1991 passed by the learned trial Court.

[18] Pending miscellaneous application(s), if any, shall also stand disposed off.

May 21, 2026
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(HARKESH MANUJA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>