

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

RSA-1918-1993 (O&M)

Reserved on :-25.03.2026

Date of Pronouncement:- 09.04.2026

Uploaded on:- 10.04.2026

Munshi (Deceased) Through his LRs and Others

... Appellants

Versus

Nika Singh and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

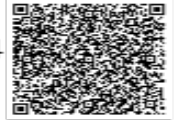
Mr. P.S. Chahal, Advocate for
Mr. G.S. Nagra, Advocate
for the appellants.

Respondent Nos. 1, 2(ii), (iv) are proceeded against
ex-parte vide order dated 26.08.2025.

Service of respondent No.5 dispensed with
vide order dated 26.08.2025.

VIRINDER AGGARWAL, J.

1. The appellants–plaintiffs have instituted the present Regular Second Appeal (here-in-after referred to as “RSA”) assailing the judgment and decree passed by the learned Additional District Judge, Amritsar, whereby the appeal preferred by the respondents–defendants was allowed, the judgment and decree rendered by the learned trial Court were set aside, and, as a consequence thereof, the suit instituted by the appellants–plaintiffs came to be dismissed.



2. Briefly stated, the appellant–plaintiff instituted a suit seeking a declaration to the effect that he is the owner in possession of the suit property, fully detailed and described in the headnote of the plaint, by way of adverse possession. A further relief was sought for correction of revenue entries, contending that the entries in the revenue record are incorrect, along with a consequential relief of permanent injunction restraining the defendants from interfering in his alleged peaceful possession.

2.1 It was specifically pleaded that the plaintiff had been in continuous possession of the suit land for more than forty years and that such possession was adverse, hostile, open, notorious, and to the knowledge of the true owner as well as the general public. It was further asserted that the entries in Column No. 9 of the Jamabandis depicting the plaintiff as a tenant are erroneous and liable to be ignored, as he was not a tenant under any person.

2.2 It was further averred that the defendants claimed to have purchased the suit property from one Phulo Ram, who, according to the plaintiff, had not been heard of for the last forty years. On this premise, the sale deed in favour of the defendants was alleged to be null and void, without consideration, and not validly executed by Phulo Ram.

3. The defendants contested the suit by filing a written statement, wherein the claim of the plaintiff regarding acquisition of ownership by adverse possession was categorically denied. It was pleaded that the defendants are the lawful owners in possession of the suit property, having purchased the same from the original owner, Phulo Ram, through a validly executed and duly registered sale deed.

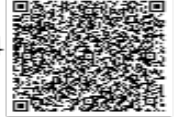


4. Upon a comprehensive and meticulous examination of the pleadings on record, as well as the rival submissions advanced by learned counsel for the respective parties, the learned trial Court deemed it appropriate to crystallize the points in controversy. Accordingly, for the purposes of a structured, systematic, and legally coherent adjudication, the Court proceeded to frame the following issues for determination:-

1. Whether the plaintiff is in adverse possession of the suit land and has become its owner ? OPP.
2. Whether the plaintiff is entitled to injunction prayed for? OPP.
3. Whether the defendants have purchased the land in dispute from original owner and are in possession as owner ? OPD.
4. Whether the suit is bad on account of non-joinder of parties ? OPD.
5. Whether the plaint has not been properly valued for the purposes of court fee and jurisdiction? OPD
6. Relief.

5. Upon affording the parties full opportunity to lead evidence and after hearing learned counsel, the learned trial Court decreed the suit. It recorded a finding that the plaintiff was reflected to be in possession of the suit land in the Jamabandis Ex.P2 to Ex.P4, while Phulo Ram was shown as the recorded owner therein. The learned trial Court further relied upon the testimonies of the plaintiff and his witnesses, namely Naranjan Singh and Puran Singh, who consistently deposed that the plaintiff had been in possession of the suit land for more than forty years.

5.1. The learned trial Court held that a presumption of truth attaches to the entries in the Jamabandi and further noted that the plaintiff, Munshi Ram, had categorically deposed that Phulo Ram had never been



seen in the village. Similar statements were made by Naranjan Singh and Puran Singh, and their testimonies on this aspect remained unchallenged. In view thereof, the Court concluded that there was no occasion for the plaintiff to pay any rent, and consequently, the entries in the Jamabandi depicting the plaintiff as a tenant were held to be erroneous. It was further observed that there was no reliable or trustworthy evidence on record to establish that Phulo Ram was alive. On the basis of the aforesaid findings, the learned trial Court held that the plaintiff had perfected his title over the suit land by way of adverse possession.

6. Aggrieved by the judgment and decree so passed, the defendants preferred an appeal, which came to be allowed by the learned District Judge. The findings of the learned trial Court regarding the appellants–plaintiffs having perfected title by way of adverse possession were reversed. It was held that there was no cogent proof of the death of Phulo Ram, and the mere fact that he had not been heard of for the last forty years could not be treated as conclusive proof of his death.

6.1. The learned First Appellate Court further observed that mere long possession, howsoever extended, cannot *ipso facto* be construed as adverse possession unless it is established to be hostile, open, and to the knowledge of the true owner. It was also held that in view of the Jamabandis Ex.P1 to Ex.P3, the oral evidence led by the plaintiff was liable to be disregarded. The Court further noted that in the latest revenue record, the defendants were shown to be in possession of the suit land as owners on the strength of the sale deed Ex.D1, which was duly reflected in the Jamabandi for the year 1983–84. Consequently, the suit of the



appellants–plaintiffs was dismissed. Aggrieved thereby, the present appeal has been preferred.

6.2. The appeal was admitted for hearing vide order dated 20.01.1994. Notice was duly served upon the respondents; however, none appeared on their behalf. The record has been perused.

7. I have heard learned counsel for the parties at considerable length and have bestowed due, anxious, and thoughtful consideration upon their respective submissions, having regard to the pleadings of the parties, the evidentiary material brought on record, and the findings recorded by the Courts below.

7.1. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of ***Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016) 6 SCC 157***, followed by the judgments in the case of ***Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317 and Satender and others V/s Saroj and others, 2022(12) Scale 92***. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

8. Learned counsel for the appellant has contended that the learned First Appellate Court has grossly misappreciated the revenue record on file and has not properly appreciated the evidence on record. It is submitted that the plaintiff was not in possession of the suit land and had



not paid any rent to Pholu Ram and Nikka Singh. It is further pointed out that respondent–Nikka Singh, in his cross-examination, admitted that he is not aware as to where Pholu Ram used to reside and is also unable to produce Pholu Ram before the Court.

8.1 It is an admitted position that Pholu Ram was the recorded owner of the suit land, whereas the appellant–Munshi Ram is shown in possession as *gair marusi* in the revenue entries, namely Jamabandi Ex.P1 for the year 1968–69, Ex.P2 for the year 1973–74, Ex.P3 for the year 1978–79, and Ex.P4 for the year 1983–84. In all these revenue records, the possession of Munshi Ram is reflected as *gair marusi* on payment of rent in kind, i.e., two “mann” of wheat per *kill*a.

8.2 It is the case of the appellant–plaintiff that Pholu Ram had not been heard of in the village for the last approximately forty years and that no rent had been paid to him during the said period. However, even accepting the case as pleaded, the appellant continues to be recorded in the revenue record as a tenant under Pholu Ram on payment of rent in kind, as reflected in Jamabandis Ex.P1 to Ex.P4.

8.3 Mere non-tracing or non-availability of Pholu Ram in the village for a long period would not, by itself, lead to a presumption that the possession of the appellant–plaintiff had become adverse to the true owner. Significantly, it is not the pleaded case of the appellant–plaintiff that his possession ever became adverse to Pholu Ram, the original owner, and thereafter to the respondents–defendants, who claim to have purchased the suit property through registered sale deed Ex.D1 executed by Pholu Ram.



8.4 A tenant in possession of the suit property is not legally entitled to challenge the validity or legality of a sale deed executed by the landlord in favour of a third party, particularly when his status as tenant continues to be reflected in the revenue record.

8.5 As regards the contention that Pholu Ram has not been seen in the village for the last forty years, the oral testimony of the plaintiff and other witnesses, in the absence of strict statutory proof, would not be sufficient to invoke the presumption of death under Section 108 of the Indian Evidence Act, 1872. Section 108 of the Evidence Act provides as under:-

“Burden of proving that person is alive who has not been heard of for the seven years. Provided that when the question is whether a man is alive or dead and it is proved that he has not been heard of for the seven years by those who would have who would naturally have heard of him if he had been alive, the burden of proving.”

9. In order to satisfy the requirements of Section 108 of the Indian Evidence Act, 1872, it is imperative that the testimony of witnesses who would ordinarily have knowledge of the whereabouts of Pholu Ram and who, in the ordinary course of events, would have heard of him being alive, ought to have been adduced. However, in the present case, none of the witnesses examined by the appellant–plaintiff is shown to be related to Pholu Ram or otherwise competent to depose on the basis of natural course of human conduct regarding his existence.



9.1 The appellant–plaintiff and his witnesses have merely deposed that Pholu Ram has not been seen in the village for a considerable period. However, mere absence from the village or non-visibility over a span of years in village, by itself, does not give rise to a legal presumption of death under Section 108 of the Evidence Act. He may have shifted his abode and have started living elsewhere. It is not the case of plaintiff that Pholu Ram has not been seen since long anywhere by the persons who would have ordinarily seen him if alive.

9.2 Even assuming that Pholu Ram has not been seen in the village, such circumstance, in isolation, does not conclusively establish that he is no longer alive in the eye of law. Unless the statutory presumption under Section 108 is duly attracted and proved in accordance with law, the legal fiction of death cannot be invoked.

9.3 Consequently, Pholu Ram remained the owner of the suit property, defendants having purchased the property through registered sale deed Ex.D1 would acquire valid title thereupon. Furthermore, as per the latest Jamabandi Ex.D2, the defendants are reflected as owners in possession of the suit property.

9.4 In view of the aforesaid appreciation of evidence, the findings recorded by the learned First Appellate Court are based upon a correct and lawful appreciation of the material on record and do not suffer from any illegality or infirmity warranting interference by this Court. Accordingly, finding no merit in the present appeal, the same is hereby **dismissed**.

10. Consequently, upon final adjudication of the principal controversy, all pending miscellaneous applications, if any, arising out of



or connected with the present proceedings, stand disposed of by necessary implication. In view of the conclusions recorded here-in-above, no separate or further orders are required in respect of such applications, the same having rendered wholly infructuous and academic

09.04.2026
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No