

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

102

RSA-2463-1993

LAKHBIR SINGH & ORS.

...PETITIONERS

VERSUS

HINDU SABHA SOCIETY & ORS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Anand Chhibbar, Sr. Advocate with
Mr. Lalit Thakur, Advocate and
Mr. Uttkarsh Khatana, Advocate for the appellants

Mr. Prateek Mahajan, Advocate for respondents

1.	The date when the judgment is reserved	21.01.2026
2.	The date when the judgment is pronounced	23.03.2026
3.	The date when the judgment is uploaded	24.03.2026
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 reason thereof.	Not applicable

SANDEEP MOUDGIL, J

CM-2395-C-2025

The applicant/appellant has moved the instant application under Order 51 Rule 3 for impleading the legal representatives on account of death of deceased appellant no.2 namely Smt. Dalip Kaur d/o Sh. Dayal Singh.

It is informed that appellant No.2 has unfortunately passed on 03.08.2019, which necessitated moving of the present application for

impleading legal representatives left behind by the deceased as detailed in para 4 of the application.

Learned counsel for the applicant also states before the Court that there is no other legal heir left by the deceased/appellant No.2.

Notice in the application to the non-applicant for whom there is no representation continuously and today, Mr. Prateek Mahajan, Advocate has been appeared having been duly served. He states no objection to the impleading of legal representatives of deceased/appellant No.2.

Accordingly, the application is allowed and amended memo of parties is taken on record.

RSA-2463-1993 (O&M)

Prayer

1. The instant Regular Second Appeal came up before this Court assailing the judgment and decree dated 26.07.1993 passed by the Lower Appellate Court, which reversed the judgment and decree rendered by the trial Court dated 11.10.1999 primarily agitating that issues No.2, 4, 5, 6 and 10 have been decided against the pleadings made by the parties, which is totally distinct to the original prayer made in the plaint by the plaintiff.

The Conspectus Of Facts

2. The factual backdrop to the leading of present Regular Second Appeal can be juxtaposed to the effect that the plaintiff/Hindu Sabha Society-respondent No.1 filed a suit for possession over land measuring 30 feet into 13 feet 9 inches and also for permanent injunctions restraining the defendants/appellants from raising any construction on the said land in dispute alongwith mandatory injunction against the above-said defendants/appellants

to demolish the structure so raised.

3. It would be worth noticing here in the suit filed against Makhan Singh and Lakhabir Singh, who were arrayed as defendant in the suit wherein Makhan Singh died during the pendency of the suit and his legal representatives were not impleaded as party.

4. The plaintiff-Hindu Sabha Society is a registered under the Societies Registration Act, 1860 formed with the aim and object of imparting education to the student community. One, Dina Nath, was the Joint Secretary of the plaintiff/society at that time and being one of the principal officers was authorized to file suit on its behalf. The Hindu Sabha Society/plaintiff is also owner of Hindu Sabha Market Dhab Wasti Ram, Amritsar, which is situated at a site separate from other buildings consisting of large number of shops. Out of those shops, one bearing No.46 was on lease with Dayal Singh/father of defendants No.2-A to 2-E, the legal representatives of deceased Dayal Singh and after the death of Dayal Singh, it is Lakhabir Singh, appellant/defendant No.2-A, who is continuing in possession thereof.

5. Defendants No.2-A to 2-E in the capacity of legal representatives of deceased Dayal Singh claimed rights of tenancy as successor as well as possession thereof in that character. Another Shop No.47 and 48 of Hindu Sabha Market were on lease with defendant No.1 Makhan Singh s/o Kishan Singh for long years and he is in occupation of the said shops as plaintiffs-lessee. The land in dispute is in close proximity to shop No.46, 47 and 48 and it is for that reason the defendants are trying to grab the said part of the land against the interest of the plaintiff/Hindu Sabha Society. It was on the night of 24/25.12.1981 allegedly the defendants/appellant took undue advantage of

closure of civil Courts at Amritsar for winter break and started raising construction on the land in dispute deploying masons and labourers, which land is claimed to be in the ownership of plaintiff/Hindu Sabha Society. It is further averred that in the forenoon of 25.12.1981, the plaintiff/society came to know about the said activity, the office bearers of the plaintiff/society visited the spot and requested the defendant/appellant to stop the said constructions and to demolish whatever has been raised by them to which the defendants did not agree. The respondent No.1/plaintiff-society approached the town planner, Municipal Corporation, Amritsar and submitted a complaint to that effect on 26.12.1981 with a copy to Deputy Commissioner, Amritsar, SSP, Amritsar and DSP (City), Amritsar apart from SHO 'C Division', Amritsar, but no action was taken by the above-said authorities as has been asserted in the plaint and neither the construction was stopped by the defendants/appellants.

6. On notice of the said suit, the defendants no.1 Makhan Singh appeared and filed written statement taking preliminary objection that the suit is barred by res judicata as the plaintiff society had earlier also filed a suit for permanent injunction against the defendant No.1 and his brother Dayal Singh, who has since died from restraining them from interfering in the peaceful possession of the plaintiffs in the property in question. The defendants Makhan Singh and his brother Dayal Singh had taken an objection to the said plea urging that they are in possession for the last 30 years over the suit property and accordingly, it was dismissed on 28.03.1986 by the Court of Sub Judge, 1st Class, Amritsar. It was also submitted on behalf of the defendants that the trial Court returned a finding that Makhan Singh and Dayal Singh are

possession in the suit property for the last more than 20 years against which an appeal was preferred by the respondent no.1/plaintiff-Hindu Sabha Society, which was also dismissed and a Regular Second Appeal was preferred before this High Court, which also stands dismissed as well.

7. The respondents/plaintiff-society then instituted a suit for possession and mandatory injunction. The defendant No.1 Makhan Singh along with his brother Dayal Singh therein claimed to have become owners over the suit property by adverse possession and as such sought dismissal of the suit being not maintainable as it is barred by *res judicata* as well as suffer from delay and laches. The defendants have in fact claimed possession over the suit property for the last more than 50 years as owner by way of adverse possession, who also took objection to the authorization of Chaudhary Dina Nath to sign verify and institute the suit on behalf of plaintiff/Hindu Sabha Society. It is also claimed on behalf of the defendants that the defendant No.1 is the owner of land in question and in his own right over half of the land and he never raised any construction upon the land in dispute.

8. On merits it was admitted that shop No.46 belonging to the respondent no. 1/Hindu Sabha Society was on lease with Sh. Dayal Singh father of defendant No.2-A to 2-R and after the death of Dayal Singh the defendant Lakhbir Singh is in possession of the said shop as tenant under the respondent no. 1/Hindu Sabha Society itself, whereas shops No.46, 47 and 48 were previously under the joint tenancy of Makhan Singh, Defendant No.1 and Dayal Singh and after the partition Dayal Singh was allotted shop No.46 and part of Shop No.47, whereas shop No.48 and remaining part of Shop No.47 went to the share of Makhan Singh. As such it is vehemently stated on

behalf of the defendants/appellants that Lakhbir Singh, defendant is in possession over the disputed property for more than 40 years and as such has become owner by adverse possession, who has legal right to raise construction over the suit property.

On the basis of above-said pleadings following issues were framed:-

- 1. Whether the plaintiff's society is a registered one ?0PP*
- 2. Whether the plaintiff is entitled to the possession of the property in dispute? OPP*
- 3. Whether the suit is barred by principle of resjudicata? 0PD*
- 4. Whether the defendants are in adverse possession of the property-in dispute? OPD*
- 5. Whether the suit is barred by order 2 Rule 2 CPC? OPD*
- 6. Whether the suit is properly valued for the purpose of court fees and jurisdiction? OPD*
- 7. Whether the suit is bad for non-joinder of necessary parties? OPD*
- 8. Whether the suit has been filed by a proper person?0PP*
- 9. Relief.*

9. The suit was dismissed with cost vide judgment and decree dated 18.10.1989 holding that since the earlier suit of the respondent/Hindu Sabha Society was dismissed on 28.03.1966 and that judgment and decree stood affirmed upto the High Court vide judgment dated 14.03.1977. The Hindu Sabha Society was therefore, in the knowledge on 28.03.1966 that defendants Makhan Singha and Dayal Singh were in possession of the suit property for the last 20 years and the defendants No.2-A to 2-E the LRs of Dayal Singh who died during the pendency of said suit, have stepped into his shoes and acquired the titled in the suit land by adverse possession as they were in possession on the date of filing of the suit for more than 35 years. As such

issue no.5 was decided against the plaintiff/Hindu Sabha Society with a finding that it is barred by Order 2 Rule 2 CPC.

10. On the question of *res judicata* i.e. Issue No.3 was decided against the appellants/defendants recording that the question of adverse possession etc. were never adjudicated in the earlier suit which was dismissed on preliminary issue alone for maintainability.

11. The said judgment and decree was assailed by the plaintiff/Hindu Sabha Society in appeal before the Additional District Judge, Amritsar, which reversed the judgment and decree of the trial Court vide its judgment and decree dated 26.07.1993 holding that the respondent no. 1/society is owner of the disputed property and appellants/defendants cannot claim to have become owner of the said property by way of possession. The Lower Appellate Court also observed that the earlier suit filed by the plaintiff was only for an injunction to restrain the defendants from interfering with their possession in the suit property and though the defendants were held to be in possession but the issue of ownership and title over the property was never decided and therefore, it cannot be held to be barred under the provisions of Order II Rule 2 CPC.

12. It is against the judgment and decree dated 26.07.1993 passed by the Additional District Judge, Amritsar/First Appellate Court, the present Regular Second Appeal has been preferred by the appellants/defendants, who are legal representatives of Sh. Dayal Singh.

Contentions

On behalf of appellants

13. Learned counsel for the appellant submits that the Lower Appellate Court erred in law by failing to appreciate that the plaintiff, Hindu Sabha Society, was required to succeed on the strength of its own pleadings and evidence and could not take advantage of any alleged weaknesses in the case of the appellants/defendants. It is further submitted in oral arguments that the Court ignored crucial evidence of the respondents while reversing the trial Court's findings, particularly regarding the nature of the appellants/defendants' possession. The trial Court had correctly held that the appellants/defendants' possession of the disputed land could not be treated as adverse merely on the basis of tenancy of nearby shops.

14. Learned counsel for the appellant further contends that the Lower Appellate Court observed that the property in dispute was in proximity to shops rented out by the plaintiff to the appellants/defendants and their predecessors, yet paradoxically held that the appellants/defendants were attempting construction under the guise of tenancy while claiming adverse possession. Learned counsel submits in oral arguments that this finding is contrary to the record and evidence, and represents a clear misappreciation of facts and law.

15. Learned counsel for the appellant argued that the Lower Appellate Court erred in holding that the provisions of Order II Rule 2 CPC were not attracted against the plaintiff. It is further argued in oral submissions that the possession of the appellants/defendants was known to the plaintiff at least since 02.11.1964, during the filing of an earlier suit for injunction, which was

dismissed on 28.03.1966 with a finding that the defendants had been in possession for more than twenty years. This finding was upheld in the subsequent second appeal decided on 14.03.1977. Learned counsel contends that, therefore, the subsequent suit filed in 1982 was barred both by limitation and by the provisions of Order II Rule 2 CPC.

16. Learned counsel for the appellant further submits that the Lower Appellate Court failed to consider that the appellants/defendants and their predecessors had maintained open, continuous, and uninterrupted possession of the disputed land for several decades, thereby perfecting their title by adverse possession. It is contended in oral arguments that the Court wrongly characterized such possession as permissive merely because the appellants/defendants were tenants of nearby shops, without any evidence that the disputed land formed part of such tenancy.

17. It is urged that the suit filed by the plaintiff-society was not maintainable. It is argued in oral submissions that the Lower Appellate Court ignored the requirement under Section 6 of the Societies Registration Act, 1860, which mandates that a suit on behalf of a registered society must be instituted by the President or Secretary, or in accordance with the society's regulations while pointing out that the instant suit was filed by one Sh. Dina Nath, Joint Secretary, without any resolution or authorization on record.

On behalf of Respondents

18. On the other hand, learned counsel appearing for the respondent-society supports the judgment and decree of the Lower Appellate Court and submits that the respondent is the undisputed owner of the property in

question forming part of the Hindu Sabha Market. It is argued that the appellants/defendants and their predecessors were tenants in respect of shops belonging to the respondent-society and their possession over the adjacent land, if any, was only permissive and incidental to such tenancy.

19. It is further contended that the earlier suit filed by the society in 1964 was merely for injunction and the question of title or ownership over the disputed property was never adjudicated in those proceedings; therefore, the principles of res judicata or Order II Rule 2 CPC are not attracted.

20. Learned counsel submits that mere long possession cannot confer ownership unless it is proved to be hostile and adverse to the true owner, and the appellants/defendants have failed to establish the essential ingredients of adverse possession. It is also argued that the construction raised by the appellants/defendants was an attempt to encroach upon the property of the society and the respondent was therefore justified in seeking possession and injunction. The Lower Appellate Court, after re-appreciating the evidence on record, rightly concluded that the property belongs to the respondent-society and that the appellants/defendants cannot claim ownership merely on the basis of alleged long possession.

21. Arguments were heard and the judgement was kept reserved on 21.01.2026.

Analysis

22. The present Regular Second Appeal arises out of a protracted litigation concerning a small parcel of land measuring 30 feet × 13 feet 9 inches, situated in the vicinity of shops bearing Nos. 46, 47 and 48 in Hindu

Sabha Market, Dhab Wasti Ram, Amritsar. The respondent–plaintiff, a registered society under the Societies Registration Act, 1860, instituted the suit seeking possession of the said land, along with permanent and mandatory injunction restraining the defendants from raising construction and directing demolition of the structure allegedly raised during the intervening night of 24/25.12.1981. The case of the respondent–society was that it is the owner of the market complex, that shops Nos. 46, 47 and 48 were admittedly let out to the predecessors-in-interest of the appellants/defendants, and that taking advantage of the winter recess of courts, the appellants/defendants encroached upon the adjoining open land and raised unauthorized construction.

23. The appellants–defendants, while admitting tenancy in respect of the shops, set up a plea that they had been in long, continuous possession of the disputed land for several decades and had perfected title by adverse possession. They further raised preliminary objections as to maintainability of the suit on the ground that it was instituted by the Joint Secretary without authorization, and also pleaded that the suit was barred under Order II Rule 2 CPC on account of an earlier suit for injunction instituted by the respondent in the year 1964, which came to be dismissed on 28.03.1966 and was affirmed up to the High Court in 1977.

24. The trial Court dismissed the suit, primarily accepting the plea of adverse possession and holding that the suit was barred under Order II Rule 2 CPC. However, the First Appellate Court, upon a comprehensive reappraisal of pleadings and evidence, reversed the findings of the trial Court and held that the respondent–society continued to be the owner of the disputed

property; that the appellants/defendants had failed to establish adverse possession and that the bar under Order II Rule 2 CPC was not attracted. It is this judgment of reversal which is assailed before this Court.

25. Upon hearing learned counsel for the parties and perusing the record, this Court finds that the controversy falls for determination on the following issues:

(i) Whether the suit instituted by the respondent–society through its Joint Secretary was maintainable in law?

(ii) Whether the findings in the 1964 injunction suit could operate as a conclusive adjudication of title or confer ownership through adverse possession?

(iii) Whether the possession of the appellants/defendants over the disputed property was permissive in nature arising out of tenancy, and whether such possession could mature into ownership by adverse possession?

(iv) Whether the present suit is barred under Order II Rule 2 of the Code of Civil Procedure, 1908?

Issue (i) – Maintainability of the suit

26. Having perused the record, this court is of the view that from the documentary evidence on record, particularly the copy of registration certificate (Ex. P1), read with the deposition of PW–1 Sh. Dina Nath, it stands duly established that the respondent–plaintiff is a society validly registered under the Societies Registration Act, 1860. The suit was instituted in the name of the society through Sh. Dina Nath, who at the relevant time was functioning as its Joint Secretary, and the plaint was duly signed and verified by him.

27. The internal governance of the society, as reflected in its Rules and Regulations (Ex. P2), assumes determinative significance. Clause XIII thereof delineates the functions of the Secretary, expressly authorising him, inter alia, to conduct legal proceedings on behalf of the society. Clause VI (read conjointly with Clause XIII) further provides that in the absence of the Secretary, the Joint Secretary is competent to discharge all functions assigned to the Secretary. The scheme of these provisions leaves no ambiguity that the Joint Secretary is not a mere subordinate functionary, but a designated substitute, fully empowered to act in place of the Secretary whenever the latter is unavailable.

28. The First Appellate Court has, in this regard, correctly observed that even a temporary or momentary absence of the Secretary would clothe the Joint Secretary with the requisite authority to act on behalf of the society. The regulatory framework does not mandate the passing of a separate or special resolution in such circumstances. The authority flows directly from the constitution of the society itself.

29. This Court finds that the trial Court fell into manifest error in insisting upon a formal resolution, overlooking the binding nature of the internal regulations (Ex. P2), which expressly confer such authority. The approach adopted by the trial Court was unduly technical and contrary to settled principles governing juristic entities.

30. The legal position is equally well settled that where the institution of a suit is otherwise traceable to an authorised office bearer under the governing rules of the entity, the absence of a formal resolution does not render the proceedings invalid. What is material is the existence of authority in

substance, not the form in which it is expressed. Also, the law is well settled that procedural objections relating to authorization cannot defeat substantive rights. The Supreme Court in *United Bank of India v. Naresh Kumar* (1996) **6 SCC 660** has categorically held that such defects are curable and that courts should not adopt a hyper-technical approach in such matters, wherein it was observed that, *“Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the Courts, under the Civil Procedure Code, to ensure that injustice is not done to any party who has a just case. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable.”*

31. In the present case, the evidence of PW-1, coupled with the documentary framework of the society, clearly establishes that Sh. Dina Nath, as Joint Secretary, was competent to institute and prosecute the suit. There is neither any challenge to his status nor any material to suggest lack of authority in fact.

32. The objection to the maintainability of the suit, as raised by the appellants/defendants and accepted by the trial Court under Issue No. 9, has been rightly reversed by the First Appellate Court, and upon an independent scrutiny of the record, this Court finds no infirmity in that conclusion

33. Accordingly, this Court concurs with the finding recorded by the First Appellate Court that the suit was validly instituted by the respondent–society through its Joint Secretary, and the contrary finding of the trial Court is liable to be set aside. **The issue is, therefore, conclusively decided in favour of the respondent–plaintiff society.**

Re: Issue (ii) – Effect of earlier injunction proceedings

34. The appellants/defendants' case rests upon a singular, yet fundamentally flawed, premise that the findings recorded in the injunction suit instituted in 1964, and affirmed up to the High Court in Regular Second Appeal decided on 14.03.1977, had the legal effect of transmuting their possession into title. This submission, though pressed with considerable emphasis, proceeds on a clear misapprehension of the nature, scope, and doctrinal limits of an injunction proceeding.

35. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. I may refer to them briefly.

1. Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

2. Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

3. Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

36. However, for clarification, a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. Where the plaintiff, believing that defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raises a serious dispute or cloud over plaintiff's title, then he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title.

37. The record would show that Civil Suit No. 394 of 1964 was instituted by the respondent–society seeking a decree of permanent injunction

restraining the predecessors-in-interest of the present appellants/defendants from interfering with the suit property. The suit came to be dismissed on 28.03.1966 on the ground that the appellants/defendants were found to be in possession, coupled with the observation that a bare suit for injunction was not maintainable in such circumstances. The matter travelled through the appellate hierarchy and culminated in the judgment of the High Court dated 14.03.1977, wherein, while affirming the dismissal, the Court expressly reserved liberty to the plaintiff to institute a suit for possession, if so advised.

38. What emerges from this trajectory of litigation is both clear and determinative: what stood concluded was the factum of possession as on the date of the earlier suit; what remained untouched, and indeed expressly left open, was the question of title.

39. The legal position in this regard is no longer *res integra*. In ***Anathula Sudhakar v. P. Buchi Reddy 2008 INSC 395***, the Supreme Court, speaking with clarity and authority, delineated the contours of suits for injunction and held that such proceedings are concerned with possession alone and do not, absent specific pleadings and framed issues, result in a conclusive adjudication of title. The Court underscored that where title is in dispute or under a cloud, the appropriate remedy lies in a suit for declaration and consequential relief, not in a bare injunction. Relevant extract of the same is as under:

“14. But what if the property is a vacant site, which is not physically possessed, used or enjoyed ? In such cases the principle is that possession follows title. If two persons claim to be in possession of a vacant site, one who is able to establish title thereto will be considered to be in possession, as against the person who is

not able to establish title. This means that even though a suit relating to a vacant site is for a mere injunction and the issue is one of possession, it will be necessary to examine and determine the title as a prelude for deciding the de jure possession. In such a situation, where the title is clear and simple, the court may venture a decision on the issue of title, so as to decide the question of de jure possession even though the suit is for a mere injunction. But where the issue of title involves complicated or complex questions of fact and law, or where court feels that parties had not proceeded on the basis that title was at issue, the court should not decide the issue of title in a suit for injunction. The proper course is to relegate the plaintiff to the remedy of a full-fledged suit for declaration and consequential reliefs.

*15. There is some confusion as to in what circumstances the question of title will be directly and substantially in issue, and in what circumstances the question of title will be collaterally and incidentally in issue, in a suit for injunction simpliciter. In **Vanagiri Sri Selliamman Ayyanar Uthirasomasundareswarar Temple v. Rajanga Asari**, AIR 1965 Madras 355, the Madras High Court considered an appeal arising from a suit for possession and injunction. The defendant contended that the plaintiff had filed an earlier suit for injunction which was dismissed, and therefore the plaintiff was precluded from agitating the issue of title in the subsequent suit, being barred by the principle of res judicata. It was held that the earlier suit was only for an injunction (to protect the standing crop on the land) and the averments in the plaint did not give rise to any question necessitating denial of plaintiff's title by the defendant; and as the earlier suit was concerned only with a possessory right and not title, the subsequent suit was not barred. There are several decisions taking a similar view that in a suit for injunction, the question of title does not arise or would arise only incidentally or collaterally, and therefore a subsequent suit for declaration of title would not be barred. On the other hand,*

in ***Sulochana Amma v. Narayanan Nair, 1993(3) RRR 682 : 1994(2) SCC 14***, this Court observed that a finding as to title given in an earlier injunction suit, can operate as *res judicata* in a subsequent suit for declaration of title. This was on the premises that in some suits for injunction where a finding on possession solely depended upon a finding on the issue of title, it could be said that the issue of title directly and substantially arose for consideration; and when the same issue regarding title is put in issue, in a subsequent title suit between the parties, the decision in the earlier suit for injunction may operate as *res judicata*. This Court observed :

"Shri Sukumaran further contended that the remedy of injunction is an equitable relief and in equity, the doctrine of res judicata cannot be extended to a decree of a court of limited pecuniary jurisdiction. We find no force in the contention. It is settled law that in a suit for injunction when title is in issue for the purpose of granting injunction, the issue directly and substantially arises in that suit between the parties. When the same issue is put in issue in a later suit based on title between the same parties or their privies in a subsequent suit the decree in the injunction suit equally operates as res judicata."

This was reiterated in ***Annaimuthu Thevar v. Alagammal, 2005(6) SCC 202***.

16. This Court in ***Sajjadanashin Sayed Md. v. Musa Dadabhai Ummer, 2000(3) SCC 350***, noticed the apparent conflict in the views expressed in *Vanagiri* and *Sulochana Amma* and clarified that the two decisions did not express different views, but dealt with two different situations, as explained in *Corpus Juris Secundum* (Vol.50, para 735, p.229) :

"Where title to property is the basis of the right of possession, a decision on the question of possession is res judicata on the question of title to the extent that adjudication of title was essential to the judgment; but where the question of the right to

possession was the only issue actually or necessarily involved, the judgment is not conclusive on the question of ownership or title."

In Vanagiri, the finding on possession did not rest on a finding on title and there was no issue regarding title. The case related to an agricultural land and raising of crops and it was obviously possible to establish by evidence who was actually using and cultivating the land and it was not necessary to examine the title to find out who had deemed possession. If a finding on title was not necessary for deciding the question of possession and grant of injunction, or where there was no issue regarding title, any decision on title given incidentally and collaterally will not, operate as res judicata. On the other hand, the observation in Sulochana Amma that the finding on an issue relating to title in an earlier suit for injunction may operate as res judicata, was with reference to a situation where the question of title was directly and substantially in issue in a suit for injunction, that is, where a finding as to title was necessary for grant of an injunction and a specific issue in regard to title had been raised. It is needless to point out that a second suit would be barred, only when the facts relating to title are pleaded, when a issue is raised in regard to title, and parties lead evidence on the issue of title and the court, instead of relegating the parties to an action for declaration of title, decides upon the issue of title and that decision attains finality. This happens only in rare cases. Be that as it may. We are concerned in this case, not with a question relating to res judicata, but a question whether a finding regarding title could be recorded in a suit for injunction simpliciter, in the absence of pleadings and issue relating to title.

17. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under :

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the

plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Annaimuthu Thevar (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for

injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”

40. This principle is not merely one of procedural convenience but is embedded in the structural design of civil adjudication. A suit for injunction is, by its nature, protective and summary as it shields possession, it does not confer ownership. The determination of title, on the other hand, requires a full fledged evidentiary inquiry, precise pleadings, and the framing of issues that bring into focus competing claims of right. The law, in its wisdom, maintains this distinction to ensure that substantive rights are not adjudicated in proceedings ill-suited to that purpose.

41. The appellants/defendants’ endeavour to elevate a finding of possession into a declaration of ownership is, therefore, doctrinally impermissible. The distinction between possession and title is neither semantic nor superficial—it is foundational. Possession is a matter of fact; title is a matter of legal right. The former may be observed; the latter must be adjudicated.

42. This position finds further reinforcement in ***Sajjadanashin Sayed v. Musa Dadabhai Ummer 2000 INSC 95***, where the Supreme Court held that only those findings which are “directly and substantially in issue” operate conclusively between the parties. Findings which are incidental or collateral do not attain such finality. The observation regarding possession in the 1964

suit was plainly incidental, it formed the basis for refusal of injunction and did not amount to a determination of proprietary rights.

43. This Court observes that the First Appellate Court has correctly appreciated that the earlier findings do not confer any proprietary right upon the appellants/defendants. The attempt to elevate a finding of possession into a declaration of title is legally impermissible. The said issue is accordingly decided against the appellants/defendants.

Issue (iii) – Nature of possession and plea of adverse possession

44. This issue strikes at the very root of the appellants/defendants' edifice, and once properly appreciated, the entire structure of their claim collapses. The plea of adverse possession, though often invoked, is not a facile incantation of long possession but it is a stringent doctrine, hedged with rigorous requirements, and must be established with clarity, consistency, and candour. Courts do not lightly countenance a claim which seeks to defeat lawful title by the mere passage of time.

45. At this juncture, it becomes necessary to recall, with doctrinal clarity, the settled contours of the law governing adverse possession, an area where courts have consistently exercised caution, for the doctrine operates not only to create title but to extinguish lawful ownership. Rooted in the classical maxim *nec vi, nec clam, nec precario*, possession, to be adverse, must be peaceful, open, and without permission. It must be accompanied by a clear and conscious assertion of hostile title of *animus possidendi* directed against the true owner and brought to his knowledge. The claimant must establish, with precision, the point of commencement of such hostile possession, its continuity for the entire statutory period, and its public and unequivocal

character. Mere longevity of possession, howsoever extended, is legally sterile unless it is infused with hostility. As authoritatively held in “**Karnataka Board of Wakf v. Government of India (2004) 10 SCC 779**”, long possession is not synonymous with adverse possession and held that,

11. In the eye of 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 state with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.

46. Similarly, in **P.T. Munichikkanna Reddy v. Revamma (2007) 6 SCC 59**, the Supreme Court underscored that the doctrine is founded not on duration alone, but on the quality, character, and intention of possession. Relevant extract is as under:

18. Thus, there must be intention to dispossess. And it needs to be open and hostile enough to bring the same to the knowledge and plaintiff has an opportunity to object. After all adverse possession right is not a substantive right but a result of the waiving (willful) or omission (negligent or otherwise) of right to defend or care for the integrity of property on the part of the paper owner of the land. Adverse possession statutes, like other statutes of limitation, rest on a public policy that do not promote litigation and aims at the repose

of conditions that the parties have suffered to remain unquestioned long enough to indicate their acquiescence.

19. While dealing with the aspect of intention in the Adverse possession law, it is important to understand its nuances from varied angles.

*20. Intention implies knowledge on the part of adverse possessor. The case of **Saroop Singh v. Banto and Others, 2005(4) RCR (Civil) 599 (SC) : 2005(4) RCR (Civil) 599 (SC) : [(2005)8 SCC 330]** in that context held :*

"29. In terms of Article 65 the starting point of limitation does not commence from the date when the right of ownership arises to the plaintiff but commences from the date the defendants possession becomes adverse. (See Vasantiben Prahladi Nayak v. Somnath Muljibhai Nayak)

*30. Animus possidendi is one of the ingredients of adverse possession. Unless the person possessing the land has a requisite animus the period for prescription does not commence. As in the instant case, the appellant categorically states that his possession is not adverse as that of true owner, the logical corollary is that he did not have the requisite animus. (See **Mohd. Mohd. Ali v. Jagadish Kalita, SCC para 21.**)"*

47. Therefore, the burden, it must be emphasised, is a heavy one, resting squarely upon the person who seeks to defeat a lawful title and such burden cannot be discharged by vague assertions or generalised claims of long use, but only by clear, cogent, and convincing evidence.

48. In the present lis, the appellants/defendants are confronted not merely with an evidentiary deficit, but the admissions made in their own pleadings. Paragraph 9 of the written statement (P-13) is eloquent in its admission, the possession of the appellants/defendants over the disputed site is traced to, and intertwined with, their tenancy in respect of adjoining shops belonging to the respondent–society, continued “for long years.” This is not a stray or casual assertion but a foundational admission, and it binds the

appellants/defendants with full legal force.

49. The law, in its wisdom, draws a sharp and principled distinction between possession that is permissive and possession that is hostile. A tenant, by entering into possession, acknowledges the title of the landlord, his occupation is juridical, referable to a lawful origin, and carries within it the imprint of permission. Such possession is, in its very nature, incapable of being adverse unless it undergoes a conscious and overt transformation which is marked by a clear, unequivocal, and communicated repudiation of the landlord's title. Without such a rupture, the continuity of possession is merely the continuity of permission. Reliance may be placed on ***Brij Narayan Shukla v. Sudesh Kumar alias Suresh Kumar 2024 INSC 9***, wherein the Apex court held that in a Suit for possession, tenants cannot claim adverse possession against landlords, since their possession is permissive in nature while observing that

Even if it is assumed that the defendant respondents were in possession from prior to 1944, their possession could not have been adverse even to the Zamindars as they were tenants and their tenancy would be permissible in nature and not adverse. There were no proceedings for possession prior to 1966.

49. The Supreme Court in ***Mohan Lal v. Mirza Abdul Gaffar (1996) 1 SCC 639*** has stated the principle with unmistakable clarity, that permissive possession does not metamorphose into adverse possession unless hostile animus is established to the knowledge of the true owner. It was held that,

4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had

acquiesced to his illegal possession during the entire period of 12 years, i.e., upto completing the period of his title by prescription 'nec vi nec clam nec precario'. Since the appellant's claim is founded on Section 53A, it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant.

50. Tested on this anvil, the appellants/defendants' claim is found wanting at every level. There is no pleading, much less proof, as to when the character of possession changed from permissive to hostile. There is no overt act brought on record that signifies a denial of the respondent's title. There is no evidence of *animus possidendi*—the conscious assertion of ownership in derogation of the true owner's rights. What is presented, instead, is a claim of long use, resting upon a substratum of tenancy.

51. This Court must emphasise that possession which is born in permission cannot, by the mere efflux of time, be transmuted into hostility. The law does not permit a tenant to quietly occupy, draw sustenance from the landlord's title, and then, without a whisper of repudiation, turn around to assert ownership. Such a plea is not merely legally untenable but conceptually self-destructive. One cannot, in the same breath, acknowledge and deny title.

52. The First Appellate Court has, in this regard, correctly perceived the true legal character of the appellants/defendants' possession. It has rightly held that the possession, being referable to tenancy, was permissive and lacked the essential element of hostility required to sustain a claim of adverse possession. This finding is neither perverse nor unsupported, it is firmly anchored in both the pleadings and the governing principles of law.

53. Accordingly, this Court finds no reason to depart from the well-

reasoned conclusion of the First Appellate Court. The appellants/defendants' plea of adverse possession, resting as it does on a foundation of admitted tenancy, must fail. The issue is, therefore, answered against the appellants/defendants.

Re: Issue (iv) – Bar under Order II Rule 2 CPC

54. Another contention raised by the appellants/defendants grounded on the non application of mind by the first appellate court in deciding the question of bar under Order II Rule 2 CPC in against the appellants/defendants. It is trite that the principle underlying the provision of Order II Rule 2 CPC is one of procedural economy, that a plaintiff must not split a cause of action and vex the defendant with multiple suits founded on the same bundle of facts. But the rule is not a mechanical bar as it operates only where the cause of action is identical and the relief omitted in the earlier suit was one which could and ought to have been claimed at that stage.

55. In the case at hand, the earlier suit instituted by the respondent–society in the year 1964 was one purely for injunction, seeking to restrain the appellants/defendants from interfering with its alleged possession over the property. That suit proceeded on a specific footing that the plaintiff was in possession and required protection against interference. However, the Court, upon appreciation of evidence, returned a finding that the appellants/defendants were in possession of the disputed property. The inevitable consequence of such a finding was that the suit for injunction, being predicated on possession, became incompetent in law. An injunction cannot be granted against a person who is himself found to be in settled possession.

56. It is in this backdrop that the legal position must be appreciated.

Once the earlier suit failed on the ground that the appellants/defendants were in possession, the remedy available to the respondent–society was not to persist with an ill-suited relief, but to seek recovery of possession on the strength of its title. The cause of action for such a suit is fundamentally distinct, it arises not from mere interference, but from dispossession or the inability to recover possession from one in occupation.

57. The law does not penalise a litigant for adopting a remedy which, on judicial determination, is found to be inappropriate. The earlier suit having been dismissed precisely because the appellants/defendants were in possession, it would be a contradiction in terms to suggest that the plaintiff ought to have claimed possession in that very suit, when the foundation of that action was its asserted possession.

58. The Supreme Court in ***Gurbux Singh v. Bhooralal*** AIR 1964 SC 1810 has clearly laid down that the bar under Order II Rule 2 CPC applies only where the subsequent suit is founded on the same cause of action and the plaintiff had omitted a relief which he was entitled to claim. Relevant extract as under:

6. In order that a plea of a bar under Order 2, Rule 2(3), Civil Procedure Code should succeed the defendant who raises the plea must make out (1) that the second suit was in respect of the same cause of action as that on which the previous suit was based; (2) that in respect of that cause of action the plaintiff was entitled to more than one relief; (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the Court omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which

the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the later suit is based there would be no scope for the application of the bar. No doubt, a relief which is sought in a plaint could ordinarily be traceable to a particular cause of action but this might, by no means, be the universal rule. As the plea is a technical bar it has to be established satisfactorily and cannot be presumed merely on basis of inferential reasoning. It is for this reason that we consider that a plea of a bar under Order 2, Rule 2, Civil Procedure Code can be established only if the defendant files in evidence the pleadings in the previous suit and thereby proves to the Court the identity of the cause of action in the two suits. It is common ground that the pleadings in C. Section 28 of 1950 were not filed by the appellant in the present suit as evidence in support of his plea under Order 2, Rule 2, Civil Procedure Code. The learned trial Judge, however, without these pleadings being on the record inferred what the cause of action should have been from the reference to the previous suit contained in the plaint as a matter of deduction. At the sage of the appeal the learned District Judge noticed this lacuna in the appellant's case and pointed out, in our opinion, rightly that without the plaint in the previous suit being on the record, a plea of a bar under Order 2, Rule 2, Civil Procedure Code was not maintainable.

59. This principle was reiterated in ***Alka Gupta v. Narender Kumar Gupta (2010) 10 SCC 141***, where it was emphasised that distinct causes of action cannot be conflated to non-suit a party, while observing that,

12. The cause of action for the first suit was non-payment of price under the agreement of sale dated 29.6.2004, whereas the cause of action for the second suit was non-settling of accounts of a dissolved partnership constituted under deed dated 5.4.2000. The two causes of action are distinct and different. Order 2 Rule 2 of the Code would come into play only when both suits are based on the

same cause of action and the plaintiff had failed to seek all the reliefs based on or arising from the cause of action in the first suit without leave of the court. Merely because the agreement of sale related to an immovable property at Rohini and the business run therein under the name of 'Takshila Institute' and the second suit referred to a partnership in regard to business run at Pachhim Vihar, New Delhi, also under the same name of Takshila Institute, it cannot be assumed that the two suits relate to the same cause of action. Further, while considering whether a second suit by a party is barred by Order 2 Rule 2 of the Code, all that is required to be seen is whether the reliefs claimed in both suits arose from the same cause of action. The court is not expected to go into the merits of the claim and decide the validity of the second claim.

60. Applying these principles, this Court finds that the earlier injunction suit and the present suit for possession operate in two distinct legal spheres. The former was a possessory action while the latter is a proprietary one. The dismissal of the earlier suit, far from attracting the bar of Order II Rule 2 CPC, furnished the very basis for the present proceedings. The plaintiff–society, having been non-suited on the ground of want of possession, was fully within its rights to institute a subsequent suit for possession on the basis of title. To hold otherwise would be to deny a rightful remedy and to elevate a procedural rule into an instrument of injustice. Order II Rule 2 CPC is intended to prevent multiplicity of litigation, not to foreclose legitimate claims arising from distinct causes of action.

61. The First Appellate Court has correctly appreciated this legal position and has rightly concluded that the present suit is not barred under Order II Rule 2 CPC. The said finding is well-reasoned, legally sound, and calls for no interference. The issue is accordingly decided in favour of the

respondent–plaintiff society.

Conclusion

62. Upon a comprehensive consideration of the facts, pleadings, and legal principles, this Court finds that the judgment of the First Appellate Court does not suffer from any perversity or legal infirmity. On the contrary, it reflects a correct and reasoned appreciation of the entire matter. The findings recorded therein, that the respondent–society is the owner of the disputed property, that the appellants’ possession was permissive in nature and could not have ripened into adverse possession, that the earlier injunction proceedings did not confer title, and that the present suit is not barred under Order II Rule 2 CPC are fully borne out from the record.

63. This Court accordingly affirms the judgment and decree dated 26.07.1993 passed by the First Appellate Court. The appeal, being devoid of merit, stands dismissed.

64. Pending applications, if any, shall stand disposed of accordingly.

23.03.2026

NainaRajput

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*

(SANDEEP MOUDGIL)
JUDGE