

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2686-1994

GURUDEV KAUR (SINCE DECEASED) THROUGH HER LRS
.....APPELLANT

VERSUS

SAROJ JINDAL & ORS.
....RESPONDENTS

1.	The date when the judgment is reserved	29.01.2026
2.	The date when the judgment is pronounced	08.04.2026
3.	The date when the judgment is uploaded	10.04.2026
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

CORAM: HON’BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Sumit Singh, Advocate for
Mr. BS Seemar, Advocate
for the Appellant No.1
None for Respondents No.1 & 2

Respondents No.3 to 5 proceeded against *ex parte*

SANDEEP MOUDGIL, J

1. The present Regular Second Appeal has been preferred by the appellant–defendant against the concurrent judgments and decrees passed by the learned Courts below dated 08.09.1989 and 13.01.1994, whereby the suit for possession instituted by the plaintiffs–respondents in respect of agricultural land measuring 1 Kanal 13 Marlas situated in the revenue estate of Nabha has been decreed in their favour. The undisputed factual matrix reveals that the plaintiffs, claiming themselves to be owners of the suit property on the basis of revenue

record, instituted the suit in the year 1986 seeking possession on the allegation that the defendant had illegally encroached upon the land and raised construction thereupon without any right or title. The defendant, while contesting the suit, set up a plea of having come into possession of the suit land as early as in the year 1976 and asserted that her possession was open, continuous and hostile to the knowledge of the true owners and had, thus, ripened into ownership by way of adverse possession. Reliance was also placed upon an earlier suit allegedly filed in the year 1979 by Tara Chand, brother of the plaintiffs, wherein it was stated that the defendant had encroached upon the land about three years prior thereto, to contend that her possession stood admitted since 1976.

2. The learned trial Court, upon appreciation of oral as well as documentary evidence, including the jamabandi for the year 1981–82 and khasra girdawari entries produced by the plaintiffs, returned a finding that the plaintiffs had successfully proved their ownership over the suit land and that the defendant had failed to establish her plea of adverse possession, particularly in the absence of any cogent evidence indicating the exact date of commencement of possession or the hostile nature thereof, and consequently decreed the suit vide judgment dated 08.09.1989. The said findings came to be affirmed by the learned first appellate Court vide judgment dated 13.01.1994, which concurred with the trial Court in holding that the plea of adverse possession had not been proved in accordance with law and that the suit was not barred either by limitation or by the principle of res judicata.

3. Assailing the said concurrent findings, learned counsel for the appellant has contended that the Courts below have misread the evidence on record and have failed to appreciate the material admission arising from the earlier

suit of 1979, which, according to him, clearly establishes that the defendant was in possession since 1976 and, therefore, by the time of institution of the present suit in 1986, her possession had matured into ownership by adverse possession. It has further been argued that the plaintiffs, being closely related to Tara Chand and having knowledge of the earlier litigation, were barred from instituting the present suit and that the findings recorded by the Courts below are perverse and liable to be set aside.

4. Per contra, learned counsel for the respondents has supported the impugned judgments and submitted that the plaintiffs are recorded owners of the suit land and the defendant is a rank trespasser who has failed to prove the essential ingredients of adverse possession, namely, the precise date of entry, continuity of possession for the statutory period and its hostile character, and that the concurrent findings of fact recorded by both Courts below do not call for interference in the limited jurisdiction of this Court under Section 100 of the Code of Civil Procedure.

5. Having heard learned counsel for the parties and perused the record.

ISSUE FOR DETERMINATION:

Whether any substantial question of law arises for consideration as to whether the concurrent findings recorded by the Courts below, rejecting the plea of adverse possession, suffer from perversity or misapplication of the settled principles of law governing adverse possession?

6. Before examining the merits of the case, it is necessary to delineate the scope of jurisdiction under Section 100 of the Code of Civil Procedure. It is well settled that a Regular Second Appeal lies only on a substantial question of law and that this Court does not sit as a Court of facts. The concurrent findings

recorded by the Courts below cannot be interfered with unless the same are shown to be perverse, based on no evidence, or arising out of a misreading of material evidence or incorrect application of law. Re-appreciation of evidence or substitution of a possible view is impermissible in the exercise of jurisdiction under Section 100 CPC. Thus, unless a substantial question of law arises, the findings of fact recorded by both the Courts below are binding. In ***Kondiba Dagadu Kadam v. Savitribai Sopan Gujar (1999) 3 SCC 722;*** , the Supreme Court has observed as under :

5. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate Court. It is true that the lower appellate Court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so. In a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible. The High Court cannot substitute its opinion for the opinion of the first appellate court unless it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or its settled position on the basis of pronouncements made by the apex Court, or was based upon inadmissible evidence or arrived at without evidence.

7. Coming to the merits, the entire controversy revolves around the plea of adverse possession raised by the appellant. However, it is a settled proposition of law that such a plea must be strictly proved by establishing the date of commencement of possession, its continuity and its hostile nature to the knowledge of the true owner. In the case in hand, the Appellant/defendant has failed to place on record any reliable evidence to establish the exact date from which her possession became adverse. A careful appraisal of the evidence on record reveals that the plaintiffs/respondents, along with their brothers, stand duly

recorded as owners of the suit land in the jamabandi for the year 1980–81 (Ex. P1), whereas the appellant/defendant is reflected in possession merely as a *Gair Marusi* and that too *bila lagan bawaja kabza*. The khasra girdawari entries (Ex. P2, P9, P10 and P11 of the courts below) further establish that prior to the year 1976, the land was in possession of Jagan Nath and it is only from the year 1976 that the defendant came to be recorded in possession, that too as an unauthorized occupant. These consistent revenue entries unmistakably demonstrate that the appellant/defendant's possession commenced only in the year 1976 and not earlier, as vaguely alleged by her. In the absence of any cogent revenue record substantiating continuous and hostile possession for the statutory period of 12 years, the plea of adverse possession cannot be sustained. The appellant/defendant's self-serving statement in the witness box, wherein she inconsistently claimed possession for 35 to 40 years, is wholly unreliable and does not satisfy the legal requirements of adverse possession. Mere long possession without proof of its hostile character is insufficient to confer title. Thus, it stands conclusively established that at best the defendant was in possession for about a decade prior to the institution of the suit in 1986, which falls short of the statutory requirement.

8. At this stage, it would be apposite to reiterate the well-settled ingredients required to establish adverse possession, namely:

- (i) the possession must be actual, open and notorious;
- (ii) it must be continuous and uninterrupted for the statutory period;
- (iii) it must be hostile to the true owner and to his knowledge; and (

iv) the possessor must set up a clear and unequivocal claim of ownership adverse to the true owner from a definite point of time.

9. The burden to prove all the above ingredients lies heavily on the person asserting adverse possession. Applying the aforesaid principles to the facts of the present case, it becomes evident that none of the essential ingredients stand satisfied.

Firstly, although possession is sought to be shown from the year 1975–76, the same is reflected as that of a “Gair Marusi”, which negates the element of hostile assertion of ownership.

Secondly, there is no cogent evidence to establish the exact date from which the possession became adverse to the knowledge of the true owners.

Thirdly, even if the possession is assumed to have commenced in 1976, the suit having been filed in the year 1986, the statutory period of 12 years is not completed.

Fourthly, the appellant/defendant has failed to prove that her possession was continuous, uninterrupted and accompanied by a clear assertion of ownership.

10. Thus, the plea of adverse possession, which has to be strictly proved, remains unsubstantiated. The learned trial Court has specifically recorded a finding that the possession of the appellant/defendant had not matured into ownership as the essential ingredients of adverse possession were not fulfilled, and this finding has been affirmed by the learned first appellate Court. The defendant has also failed to establish the exact date of commencement of hostile possession or to

prove that such possession was continuous, uninterrupted and to the knowledge of the true owners. Mere long possession or unauthorized occupation is not sufficient to constitute adverse possession.

11. As regards the another contention raised on behalf of the appellant that the present suit is barred by the principle of res judicata on account of earlier litigation is equally devoid of merit. For the application of res judicata under Section 11 CPC, it must be shown that the matter directly and substantially in issue in the present suit was directly and substantially in issue in a former suit between the same parties or their privies and had been finally decided by a Court of competent jurisdiction. In the present case, the alleged earlier suit was neither between the same parties nor is there any material to show that the issue of title and entitlement to possession, as involved in the present proceedings, was finally adjudicated therein. The appellant has failed to produce any conclusive evidence to establish the identity of issues and parties so as to attract the bar of res judicata. Thus, the said plea is liable to be rejected.

12. Both the Courts below have, on a proper appreciation of evidence, recorded concurrent findings that the plaintiffs are the owners of the suit land, that the defendant entered into possession around 1975–76, that her possession was not adverse in law. This Court finds no perversity, illegality or misreading of evidence in the said findings. The arguments raised by the appellant essentially seek re-appreciation of evidence and substitution of findings of fact, which is impermissible in a Regular Second Appeal.

13. In view of the aforesaid discussion, this Court is of the considered opinion that **no substantial question of law arises for consideration** in the

present appeal. The findings recorded by the Courts below are based on sound appreciation of evidence and correct application of law and do not warrant interference under Section 100 CPC.

14. Accordingly, the present Regular Second Appeal is dismissed and the judgments and decrees passed by the Courts below 08.09.1989 & 13.01.1994 are affirmed.

15. Pending applications, if any, shall also stand disposed of. No order as to costs.

08.04.2026
anuradha

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*