

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

(204)

RSA-1400-1996 (O&M)
Date of Decision: **09.03.2026**

STATE OF HARYANA THROUGH COLLECTOR AND ANOTHER

... Appellants

Versus

VIRENDER SINGH (DECEASED) THROUGH LRs AND ANOTHER

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. Ved Parkash, Senior DAG, Haryana
for the appellants.

Mr. Sandeep Singh, Advocate
for the respondent No.1(i), (ii), (iii) and (iv).

VIRINDER AGGARWAL, J. (Oral)

1. The present Regular Second Appeal (here-in-after referred to as “RSA”) has been preferred by the appellants–defendants, who is aggrieved by the judgment and decree dated 22.11.1995 rendered by the learned Additional District Judge (II), Jind, whereby the well-reasoned judgment and decree dated 11.06.1992 passed by the learned Additional Senior Sub-Judge, Safidon came to be modified. By way of the instant appeal, the appellants have respectfully invoked the second appellate jurisdiction of this Court, seeking restoration of the decree lawfully granted by the learned Trial Court. It is contended that the impugned judgment has occasioned a serious miscarriage of justice, warranting



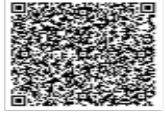
interference by this Court, and therefore the appellants pray that the decree passed by the learned Trial Court be reinstated in its original form.

2. The factual matrix and the sequence of events preceding, and ultimately culminating in, the institution of the present appeal may be briefly delineated as under:-

“The plaintiff’s case is that Hardei, widow of Bakhtawar, was the recorded owner of agricultural land measuring 26 kanals 5 marlas, comprised in Khewat No. 50, Khatoni No. 67, Rect. No. 2, Killa Nos. 22, 23, 24 and 25, situated in the revenue estate of village Titokheri, Tehsil Safidon, District Jind, as reflected in the Jamabandi for the year 1971–72 (here-in-after referred to as “the suit land”). It is pleaded that Hardei died about 35–36 years prior to the institution of the suit, leaving behind no legal heirs and having died intestate.

The plaintiff asserts that the suit land was originally ‘gair mumkin thur’, which he reclaimed through substantial expenditure and labour, and that he has remained in open, continuous and uninterrupted possession, thereby claiming title by adverse possession. It is further averred that the Assistant Collector Ist Grade, Safidon, vide order dated 28.02.1985, sanctioned Mutation No. 328 declaring the property to have escheated to the State, which order is challenged on the ground that it was passed without impleading or hearing the plaintiff, despite his alleged possession.

Accordingly, the plaintiff, acting through his Special Power of Attorney holder Balbir Singh, sought a decree of declaration declaring him owner in possession of the suit land, along with a decree of permanent injunction restraining the defendants from interfering with or dispossessing him from the suit property. Hence the suit.”



3. Upon due service of summons, the defendants entered appearance before the Court and filed their written statement, wherein the following submissions and pleas were set forth for consideration:-

“Defendants appeared raised preliminary objections that the suit was bad for mis-joinder and non-joinder of necessary parties, not maintainable in its present form, and that the Civil Court lacked jurisdiction in view of Section 158 of the Punjab Land Revenue Act, 1887. It was further pleaded that the plaintiff had no locus standi, that the suit was improperly valued for the purposes of court fee and jurisdiction, and that it was barred for want of notice under Section 80 CPC.

On merits, while admitting that Hardei was the owner of the suit land, the defendants asserted that she died 35–36 years earlier without leaving any legal heir, as a consequence of which the property escheated to the State of Haryana, which thereby became its lawful owner. The defendants denied that the land was gair mumkin thur or that it had been reclaimed by the plaintiff.

It was further pleaded that the mutation was entered on 07.03.1984, and upon objections raised by the Gram Panchayat, the matter was referred to the Assistant Collector Ist Grade, Safidon as a contested mutation. After hearing the parties and issuing public notice through publication in “Punjab Kesri” dated 08.01.1985, the mutation was sanctioned in favour of the State of Haryana on 28.02.1985. It was also stated that no claimant, except Banwari, appeared before the revenue authority to assert any right over the property. On these grounds, the defendants prayed for dismissal of the suit with costs.”

4. The plaintiff thereafter filed a replication, wherein the averments raised in the written statement were specifically controverted,



while the assertions and pleadings contained in the plaint were reiterated and reaffirmed. Upon a careful and comprehensive consideration of the pleadings of the parties, the documents placed on record, and the submissions advanced on their behalf, the learned Trial Court, vide order dated **14.09.1988**, deemed it appropriate to frame the following issues for adjudication, so as to facilitate a proper, effective, and conclusive determination of the rival claims and defenses of the parties, which read as under:—

1. *Whether the plaintiff is owner in possession of the suit property as alleged? OPP*
2. *Whether the mutation No.328 sanctioned on 28-2-1985 is null and void and is liable to be set aside as alleged? OPP*
3. *Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPP*
4. *Whether the suit is not maintainable in the present form? OPP*
5. *Whether the civil court has no jurisdiction to try the present suit? OPP*
6. *Whether the plaintiff has no locus standi to file the present suit? OPP*
7. *Whether the suit is not properly valued for the purposes of Court fee and jurisdiction ? OPP*
8. *Whether the suit is bad for want of notice under Section 80 CPC ? OPP*
9. *Relief.*

5. Both parties were afforded adequate and meaningful opportunity to lead evidence in support of their respective pleadings and claims. Upon completion of the evidentiary proceedings and after hearing



the learned counsel representing the parties at length, the learned Trial Court, upon due consideration of the material available on record, proceeded to partly decreed the suit, while recording, *inter alia*, the following observations:—

“The cumulative effect of the findings recorded on the various issues discussed here-in-above leads this Court to the conclusion that the suit instituted by the plaintiff partly merits acceptance.

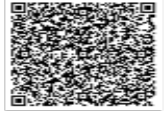
Consequently, the defendants are hereby restrained from dispossessing the plaintiff from the suit land measuring 26 kanals 5 marlas, comprised in Khewat No. 50, Khatoni No. 67, Rect. No. 2, Killa Nos. 22 (8-0), 23 (8-0), 24 (8-0) and 25 (2-5), situated within the revenue estate of village Titokheri, Tehsil Safidon, District Jind, except in accordance with due process of law.”

6. Feeling aggrieved by the aforesaid judgment and decree, the respondents/appellants preferred an appeal before the learned First Appellate Court. Upon consideration of the matter, the learned First Appellate Court proceeded to modify the judgment and decree passed by the learned Trial Court and allowed the appeal in its entirety, while recording, *inter alia*, the following observations:—

“The cumulative effect of the aforesaid discussion and findings recorded on the issues arising for determination leads this Court to the considered conclusion that the suit instituted by the plaintiff deserves to be decreed in its entirety. Consequently, the findings recorded by the learned Trial Court stand modified to the aforesaid extent.

Resultantly, the appeal preferred by the plaintiff stands allowed, whereas the appeal filed by the defendants is hereby dismissed.

Accordingly, a decree for declaration is hereby passed in favour of the plaintiff and against the defendants to the effect that the plaintiff



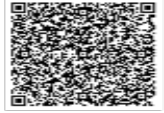
is the owner in possession of the suit land by virtue of adverse possession, and that Mutation No. 328 dated 28.02.1985 is illegal, null and void, not binding upon the rights of the plaintiff, and liable to be set aside.

A further decree of permanent injunction is also passed restraining the defendants from dispossessing the plaintiff from the land in dispute except in due course of law.”

6.1. Assailing the findings and determinations recorded by the learned First Appellate Court, the appellants–defendants have instituted the present appeal before this Court. Upon admission of the appeal, notice was duly issued to the respondents, whereupon they entered appearance through learned counsel and contested the appeal. The records of the Courts below were accordingly summoned and available for through scrutiny and adjudication.

7. I have heard the learned counsel appearing for the parties at considerable length and have given my anxious, careful, and thoughtful consideration to their respective submissions, in the light of the pleadings of the parties, the evidence brought on record, and the findings returned by the Courts below.

8. 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.

9. Learned counsel appearing on behalf of the appellants has strenuously contended that the learned First Appellate Court has fallen into a manifest error in holding that the respondent–plaintiff had perfected his title over the suit land by way of adverse possession merely on the premise that he was found to be in possession of the property since the year 1965–66. It is further argued that such a finding is not only factually untenable but also legally unsustainable. Learned counsel submits that mere long or continuous possession, howsoever extended in duration, does not by itself mature into ownership, unless it is specifically pleaded and conclusively established that such possession was open, hostile, and adverse to the true owner. On this premise, it is urged that the impugned judgment and decree suffer from patent illegality and, therefore, deserve to be set aside, and the present appeal be allowed.

10. Per contra, learned counsel representing the respondents has contended that the judgments rendered by the Courts below do not suffer from any illegality, infirmity, or perversity warranting interference by this Court. It is submitted that the learned Courts below have arrived at their conclusions after due and proper appreciation of the entire evidence available on record, and have recorded categorical findings of fact which are firmly founded upon the evidentiary material placed before them. According to the respondents, such well-reasoned findings do not call for



any interference in appellate jurisdiction.

11. The learned First Appellate Court has recorded its findings in paragraph No. 14 of the impugned judgment, which is reproduced hereunder:—

“14. The plaintiff has adduced the evidence that his possession is continuous and uninterrupted w.e.f.1965. The suit was filed on 07.06.1985. Therefore, it is clear that the plaintiff had become owner in possession of the suit land on the basis of his adverse possession. Thus I have come to the conclusion that the findings of the learned Trial court on issue no.1 are liable to be modified, hence in view of my aforesaid discussion, I hereby hold that the plaintiff is owner in possession of the suit land as alleged in the plaint. Therefore, I hereby decide the whole issue No. 1 in favour of the plaintiff and against the defendants by modifying the findings of the ld. Trial Court.”

12. A perusal of the aforesaid paragraph unmistakably reveals that the learned First Appellate Court has recorded a finding to the effect that the plaintiff has remained in continuous and uninterrupted possession of the suit property w.e.f. the year 1965, and on that premise has concluded that the plaintiff has perfected his title and become the owner in possession of the suit land by way of adverse possession.

12.1. However, the aforesaid reasoning does not appear to be in consonance with the settled principles governing the doctrine of adverse possession. The Hon’ble Supreme Court, in the authoritative pronouncement rendered in *Mallikarjunaiah vs. Nanjaiah and Others*, **2019(5) SCC 756**, has unequivocally held that mere possession of property, irrespective of its duration, is not by itself sufficient to sustain a plea of



adverse possession, unless such possession is specifically shown to be hostile, open, and to the knowledge of the true owner.

12.2. The relevant extract from the aforesaid judgment of Hon'ble Apex Court reads as under:-

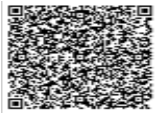
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It is a settled principle of law that mere continuous possession howsoever long it may have been qua its true owner is not enough to sustain the plea of adverse possession unless it is further proved that such possession was open, hostile, exclusive and with the assertion of ownership right over the property to the knowledge of its true owner.

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13. In the present case, the learned First Appellate Court has itself recorded a categorical finding that Hardai, the erstwhile owner of the suit property, passed away in the year 1945 leaving behind no legal heirs. Consequently, by operation of law, the property stood escheated to the State, thereby vesting ownership in the State from the said point of time. It thus follows that, subsequent to the year 1945, the State became the lawful owner of the suit property.

13.1. However, a careful examination of the pleadings as well as the evidence adduced on record reveals that there is no specific averment, nor any cogent evidence, to establish that the possession allegedly held by the plaintiff was hostile, adverse, and to the knowledge of the State, which alone could satisfy the essential ingredients necessary to sustain a plea of adverse possession against the true owner. It is well settled that mere long or uninterrupted possession, in the absence of clear and unequivocal proof



of hostile animus against the true owner, cannot mature into title by adverse possession.

13.2. In these circumstances, the conclusion drawn by the learned First Appellate Court holding the plaintiff to have perfected title by adverse possession cannot be sustained in law. Consequently, the present appeal filed by the appellants is **allowed**, and the judgment and decree rendered by the learned First Appellate Court are modified to the limited extent that the appellants–State is restrained from forcibly dispossessing the respondent–plaintiff from the suit property except in due course of law.

14. In view of the fact that the principal controversy stands finally adjudicated by the present judgment, all pending miscellaneous or ancillary applications, if any, shall also stand disposed of accordingly, and no further orders are required to be passed thereon.

09.03.2026
Gaurav Sorot

(**VIRINDER AGGARWAL**)
JUDGE

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