



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

**RSA-1750-1996 (O&M)**

**Reserved on :-21.01.2026**

**Date of Pronouncement:-28.01.2026**

**Uploaded on:-28.1.2026**

Hazara Singh and another

... Appellants

Versus

Jiwan Ram (deceased) through his LRs

... Respondents

\*\*\*\*

**CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL**

Argued by :-

Mr. Hem Raj Bhardwaj, Advocate  
for the appellants.

Mr. Mohit Jaggi, Advocate  
for the respondent.

\*\*\*\*

**VIRINDER AGGARWAL, J.**

1. The present Regular Second Appeal (for short "RSA") has been instituted by the appellants–defendants to assail the judgment and decree dated 20.03.1996 passed by the learned Additional District Judge, Patiala, whereby the findings returned by the trial Court were unreservedly affirmed. The trial Court, vide its judgment and decree dated 19.05.1990 rendered by the learned Sub-Judge Ist Class, Rajpura, had decreed the respondent/plaintiff's suit for possession. The appellants now question the concurrent findings of both Courts below, asserting that the same are legally untenable and factually perverse.



2. At the very outset, it is asserted with utmost clarity that the plaintiff/respondent predicates his claim on his lawful ownership and possession of the suit property, which is as under:-

*“In the plaint, the plaintiff/respondent averred that the defendants/appellants had earlier attempted to dispossess him forcibly, compelling him to institute a suit for permanent injunction wherein an ad interim injunction was duly granted. Nevertheless, during the pendency of that suit, and specifically when the matter stood posted for evidence, the defendants/appellants allegedly dispossessed him by force, raised embankments around the disputed property, and placed two Goharas (heaps of cow-dung cakes) upon it. The plaintiff/respondent approached the police authorities, but no action was taken, purportedly owing to the fact that appellant Manjit Singh was the serving Sarpanch of the village. His application in the injunction proceedings seeking the appointment of a Local Commissioner was dismissed, rendering the earlier suit infructuous, whereupon he withdrew it and immediately instituted the present suit for possession, asserting that he had been forcibly dispossessed approximately 1 ¼ months prior to its filing”.*

3. Upon service of summons, the defendants/appellants entered appearance and filed a contesting written statement claiming therein as under:-



*“They asserted ownership and possession of the suit property, characterising it as their ancestral Bara, and categorically denied having dispossessed the plaintiff/respondent 1 ¼ months prior to the institution of the suit. They further pleaded that they had, in any event, perfected title by adverse possession, their possession being continuous, hostile, peaceful, open, and uninterrupted for more than twelve years. The suit was also assailed as being barred by limitation”.*

4. Upon a comprehensive and careful scrutiny of the pleadings on record, as well as the rival contentions advanced by the parties, the Court deemed it appropriate to crystallize the matters in controversy and, for the purposes of a systematic and legally coherent adjudication, proceeded to frame the following issues for determination:-

1. *Whether the plaintiff is owner of the site in dispute? OPP.*
2. *Whether the defendants have become owners of the suit property by way of adverse possession? OPD.*
3. *Whether the suit is not maintainable? OPD.*
4. *Relief.*

5. Upon the framing of issues, both sides were accorded full and adequate opportunity to adduce evidence. On a comprehensive evaluation of the entire evidentiary corpus, the learned trial Court decreed the suit in favour of the respondent/plaintiff. The appeal preferred by the appellants/defendants was subsequently dismissed by the First Appellate Court. It is the challenge to these concurrent findings that has culminated in the present RSA.



6. The appellants have thus approached this Court assailing the concurrent judgments and decrees of the Courts below. The appeal, having been found to warrant consideration, was duly admitted to regular hearing, and notice was issued to the respondents, who entered appearance through counsel and contested the matter. The appeal was thereafter heard in its entirety on the submissions advanced by learned counsel for both parties.

6.1 For a comprehensive and informed adjudication, the complete lower Court record was requisitioned and stands made available on the DMS portal of this Court for perusal and consideration.

7. 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. I have heard learned counsel for the parties at considerable length and have bestowed anxious, thoughtful, and deliberate consideration upon their submissions, duly calibrated against the pleadings of the parties, the entire evidentiary record, and the concurrent findings returned by the Courts below. The entire case record has been subjected to meticulous



and comprehensive scrutiny to ascertain “*whether the impugned concurrent judgments and decrees disclose any jurisdictional error, patent perversity, misappreciation of evidence, or other legal infirmity warranting interference in the exercise of appellate jurisdiction*”?

9. With the utmost respect, it is submitted that learned counsel for the appellant has mounted a vigorous and meticulously reasoned challenge to the impugned judgment and decree rendered by the learned First Appellate Court. The appellant’s critique rests predominantly upon two cardinal foundations, each striking at the very root of the reasoning adopted by the court below and exposing material infirmities that, in the respectful submission of the appellant, warrant appellate reconsideration. :-

- i. *Firstly that the suit of the plaintiff was barred as per provisions of Order 23 Rule 1(4) of CPC as respondent-plaintiff filed second suit without getting the first suit withdrawn with permission to file suit on the same cause of action. The appeal of the appellant has been admitted primarily on this question, as per order dated 21.04.1997 and where this Court has prima facie recorded opinion that second suit claiming the same very relief is not maintainable.*

9.1. Conversely, learned counsel appearing for the respondent–plaintiff has strenuously urged that the very premise upon which the appellant–defendant seeks to assail the maintainability of the present suit is fundamentally misconceived. It is submitted that the factual assertion advanced by the appellant is erroneous, inasmuch as the suit culminating in the present appeal does not emanate from the same cause of action as the earlier suit. Rather, the cause of action giving rise to the present



proceedings arose independently and subsequently, during the pendency of the respondent–plaintiff’s earlier suit for permanent injunction.

9.2. In this backdrop, it is contended that the embargo contained in Order XXIII Rule 1(4) of the Code of Civil Procedure can have no application to the facts at hand. The learned First Appellate Court, therefore, committed no error in holding the suit to be maintainable and in affirming the decree passed in favour of the respondent–plaintiff.

10. Secondly, learned counsel for the appellant has further submitted, with considerable emphasis, that the findings returned by the learned First Appellate Court on the issue of the appellant-defendant’s alleged possession for a period of twelve years, and the consequent conclusion that no title stood perfected by way of adverse possession are vitiated by a manifest misappreciation of the evidence on record. It is contended that the impugned findings suffer from material infirmities and, therefore, imperatively warrant thorough re-appreciation by this Court.

10.1. With profound respect, it is the gravamen of the respondent’s submission that the learned Courts below have undertaken a correct, cogent, and lawful appreciation of the evidence on record. In particular, the testimonies of the defendant’s witnesses have been duly evaluated in their proper legal perspective, and on such judicious appraisal, the Courts have rightly returned a categorical finding that the respondent–plaintiff was dispossessed from the suit property within six months preceding the institution of the suit. Consequently, it is urged that the impugned judgment warrants no interference and that the present appeal, being devoid of merit, merits dismissal.



11. Adverting, at the very threshold, to the respondent's first contention, it becomes imperative to anchor the discussion upon the statutory framework governing the issue. In this regard, the provisions of Order XXIII Rule 1 of the Code of Civil Procedure assume direct and determinative relevance, and the same are therefore reproduced here-in-below for ready reference:-

***“ORDER XXIII***

***Withdrawal and Adjustment of Suits***

***[1]. Withdrawal of suit or abandonment of part of claim.—***

- (1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim: Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.*
- (2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.*
- (3) Where the Court is satisfied,—*
  - (a) that a suit must fail by reason of some formal defect, or*
  - (b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of suit or part of a claim, It may, on such terms as it thinks fit grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.*



- (4) *Where the plaintiff—*
- (a) *abandons any suit or part of claim under sub-rule (1), or*
- (b) *withdraws from a suit or part of a claim without the permission referred to in sub-rule(3), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.*
- (5) *Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiff.”*

11.1. At the outset, it warrants emphatic reiteration that the statutory mandate embodied in Order XXIII Rule 1 CPC is both explicit and uncompromising in its terms. Sub-rule (4) unequivocally postulates that a plaintiff shall stand precluded from instituting any fresh suit in respect of the very subject matter, or any portion of the claim, which he has abandoned or withdrawn without obtaining the requisite leave contemplated under Sub-rule (3).

11.2. In the present matter, it is an admitted and undisputed position that the respondent–plaintiff had earlier instituted a suit seeking a decree of permanent injunction, and that such suit was unconditionally withdrawn without securing permission to institute a fresh proceeding on the same cause of action, as mandated under Order XXIII Rule 1(3) CPC. Consequently, a subsequent suit would ordinarily be barred if it were founded upon an identical cause of action.





11.3. However, a careful juxtaposition of the pleadings reveals that the two suits rest upon wholly distinct factual foundations. The first suit for permanent injunction was predicated on the assertion that the plaintiff was in possession of the suit land and that the defendants were issuing threats to dispossess him, thereby necessitating injunctive relief for protection of possession. In contradistinction, the subsequent suit for possession was instituted on the assertion that during the pendency of the earlier suit for injunction, the appellant-defendant forcibly dispossessed the respondent-plaintiff from the suit property. These circumstances constitute a separate and independent cause of action.

11.4. Accordingly, the bar under Order XXIII Rule 1 is not attracted, and the learned First Appellate Court has, with legal propriety, held that the second suit was not interdicted by the earlier withdrawal. The findings to this effect stand duly articulated in paragraph 9 of the impugned judgment, the relevant portion whereof is reproduced here-in-below:-

*“Let us for argument sake take that this objection is covered in the simple plea of the suit being not maintainable. Admittedly, the plaintiff had in the first instance filed a suit for permanent injunction when the defendants/appellants wanted to take forcible possession. This suit was filed on 23.8.95 and was registered at No.423. In this suit, status quo order, copy of which is Ex.P9, was passed by Sub Judge Ist Class, Rajpura on 11.10.85. However, on 18.7.87, the plaintiff/respondent made a statement, certified copy of which is on the record, that during the pendency of that suit, the defendants/appellants had taken forcible possession of some portion of the site, regarding which he had filed a suit for possession and as such, the suit for injunction should be dismissed. It is on the basis of this statement that*



*on the same day i.e. on 18.7.87, the suit was dismissed as withdrawn. The present suit was filed on 8.6.87 is more than a month before the dismissal of the earlier suit. The dates would thus show that when the present suit was filed, the previous suit was still pending and it cannot be said that the present suit was filed after the earlier suit was dismissed as withdrawn and without permission. Technically therefore, the provisions of Order 23 Rule 1 (3) C.P.C are not attracted, Still further, in the circumstances stated, the earlier suit was for temporary injunction and alleging that possession was taken during the pendency of that suit, a fresh suit was filed for possession. Certainly, therefore, the plaintiff/respondent had a fresh cause of action to file the suit for possession and the subsequent suit being not for the same cause of action, provisions of Order 23 Rule 1 C.P.C. would therefore, be inapplicable. The various authorities cited by the learned counsel for the appellants, such as A.I.R. 1989 NOC 193 (Orissa) Smt. Radha alias Radharani Dei Bhoi Vs. Dibakar Nayak, 1991 P.L.J.741 Raja Ram Vs. Ram Karan, A.I.R. 1990 Kerala, 215 Order of the Holy Cross Vs. Lonnappan Thattil, 1991(2) Latest Judicial Reports 238 Smt. Rajwant Kaur Vs. M/s Arora Food Mills and AIR 1991 Calcutta 116 Geeta Bose Vs. 4 Machine Tools of India Ltd. are not of any consequence. The opposite counsel has also cited A.I.R. 1990 NOC 173 (Andh.Pra.) Amaravadi Jagannadhacharyulu Vs. Govt. of Andhra Pradesh and A.I.R. 1990 Madhya Pradesh 80, Smt. Indubai & another Vs. Jawaharlal and another to say that the second suit is maintainable. For the factual position discussed here-in-before, I disagree with the submissions of the learned counsel for the appellants that the second suit for possession was not maintainable on the argued ground of the previous suit for injunction having been dismissed as withdrawn. With this conclusion, an application under order 23 Rule 1 C.P.C. filed by*



*the appellants/defendants during the pendency of the appeal is also dismissed.”*

12. Upon a careful and judicious examination of the matter, it becomes manifest that the findings returned by the learned First Appellate Court suffer from no infirmity, jurisdictional error, or perversity whatsoever. The Court has rightly concluded that the present suit is maintainable notwithstanding its institution during the pendency of the earlier suit for permanent injunction filed by the respondent–plaintiff. This is for the reason that the subsequent suit emanates from a distinct and independent cause of action that arose only during the subsistence of the previous proceedings. Consequently, the maintainability of the later suit stands firmly supported in law and the reasoning adopted by the learned First Appellate Court warrants no interference.

12.1. Turning now to the second limb of the appellant–defendant’s submissions, it becomes necessary to scrutinize the foundational assertions advanced in the written statement with the rigor the law demands. The appellant–defendant has predicated his claim to the suit property on two distinct grounds: first, that the land in question constitutes his ancestral property; and second, that he has, in the alternative, perfected title thereto by way of adverse possession.

12.2. Insofar as the plea of ancestral ownership is concerned, the factual matrix itself stands in decisive contradiction to such an assertion. It is an admitted and undisputed position that the appellant–defendants are not the original inhabitants of the village. The suit land lies within the red-line area of the village, and in respect of such lands, no formal revenue record evidencing ownership traditionally exists; rather, the proprietary



rights therein remain vested, as a matter of long-established custom, in the families who occupy the village from generation to generation. The evidence on record further establishes that the appellant–defendants migrated to this village from Pakistan after the partition in 1947.

12.3. Accordingly, the learned Court below was wholly justified in concluding that the suit land could not, by any legal or factual standard, be characterized as the ancestral property of the appellant–defendants.

12.4. Proceeding to the alternate limb of the appellant–defendants’ defence, it becomes necessary to examine, with exacting scrutiny, their plea of having perfected title by way of adverse possession. The learned First Appellate Court has undertaken a comprehensive evaluation of the testimonies of the witnesses produced by the appellant–defendants and has, with unassailable reasoning, discredited their evidentiary worth.

12.5. Puran Singh (DW-1) deposed that the appellant–defendants had been in possession of the suit land for the last 35–36 years and had constructed a dwelling unit thereon in which they were residing. This version stood in direct contradiction to the very foundation of the defendants’ case, and the learned Court below rightly found it unworthy of reliance. Kuldeep Singh (DW-2) introduced an altogether new and unpleaded narrative by asserting that the suit land had been allotted to the defendants by the Government and that a *sanad* was prepared in their favour. This plea not only fell outside the pleadings but was inherently destructive of their claim of adverse possession, for a person asserting allotment and title cannot simultaneously claim hostility against the true owner. His testimony, therefore, was correctly discarded.



12.6. Manjit Singh (DW-3), one of the appellant-defendants himself, admitted in cross-examination that they had neither purchased the suit land nor had it ever been allotted to them. He further conceded that Jeeva Ram, the respondent-plaintiff, is an original inhabitant of the village, whereas the defendants are refugees settled there since 1947. His admission regarding the orientation of the plaintiff's house also stood at variance with the testimony of the other witnesses, further eroding the credibility of the defence.

12.7. DW-5 Suran Singh propounded yet another inconsistent version by claiming that the suit land had been allotted to the defendants during consolidation proceedings and that the respondents had purchased the land 20–25 years earlier. This assertion, too, was irreconcilable with the admitted factual position that the appellant-defendants, being non-original inhabitants, held no property in the village prior to partition and, therefore, could not have been beneficiaries of any consolidation allotment. Notably, no such plea of consolidation allotment was ever set up in the written statement.

13. In view of these mutually destructive and internally contradictory statements, the collective testimonies of the defence witnesses fail to lend even the slightest support to the plea of adverse possession. The defendants have not established continuous, open, hostile, and uninterrupted possession to the knowledge of the true owner for the statutory period of twelve years. Accordingly, the learned First Appellate Court has rightly rejected the claim of the appellant-defendants that they had perfected title by adverse possession.



13.1. At this stage, it bears reiteration of the time-honoured principle that a plea of adverse possession, by its very nature, seeks to extinguish the lawful rights of the true owner and, consequently, attracts no equitable consideration in favour of the party asserting it. Since the plea rests upon an assertion of continuous, open, hostile, and uninterrupted wrongful possession extending beyond the statutory period of twelve years, the burden lies squarely and uncompromisingly upon the claimant to specifically plead and affirmatively establish every constituent ingredient of adverse possession.

14. In this regard, reference may be made to the authoritative pronouncement of the Hon'ble Apex Court in ***Karnataka Board of Wakf vs. Government of India and Others, 2004 (2) RCR (Civil) 702***, wherein it has been held as under:-

*"Plaintiff, filing a title suit should be very clear about the origin of title over the property. He must specifically plead it. (See: S M Karim v. Bibi Sakinal AIR 1964 SC 1254). In P Periasami v. P Periathambi (1995) 6 SCC 523 this Court ruled that - "Whenever the plea of adverse possession is projected, inherent in the plea is that someone else was the owner of the property." The pleas on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Dealing with Mohan Lal v. Mirza Abdul Gaffar (1996) 1 SCC 639 that is similar to the case in hand, this Court held:-*

*"As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right there under 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., up to completing the period his title by prescription nec vi, nec clam, nec precario. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of 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."*

14.1. Further, it is respectfully submitted that the Hon'ble Supreme Court, in ***M. Radheshyamlal vs. V. Sandhya and Another, 2024 (2) RCR (Civil) 351***, has elaborated on the principles governing the acquisition of title by adverse possession. The Hon'ble Court has held as under:-

12. Therefore, to prove the plea of adverse possession :-

- (a) *The plaintiff must plead and prove that he was claiming possession adverse to the true owner;*
- (b) *The plaintiff must plead and establish that the factum of his long and continuous possession was known to the true owner;*
- (c) *The plaintiff must also plead and establish when he came into possession; and*
- (d) *The plaintiff must establish that his possession was open and undisturbed.*

*It is a settled law that by pleading adverse possession, party seeks to defeat the rights of the true owner, and therefore, there is no equity in his favour. After all, the plea is based on continuous wrongful possession for a period of more than 12 years. Therefore, the facts*



*constituting the ingredients of adverse possession  
must be pleaded and proved by the plaintiff.”*

15. In the final analysis, it becomes unequivocally apparent that the appellant–defendants have wholly failed to discharge the burden of establishing that they had perfected title by way of adverse possession. The findings returned by the learned First Appellate Court rest upon a flawless and judicious appreciation of the evidence adduced by both parties. The Court has rightly concluded that the respondent–plaintiff was dispossessed from the suit property within a period of six months preceding the institution of the suit, thereby entitling him to restoration of possession under the governing statutory framework. Consequently, the appeal preferred by the appellant–defendants stands **dismissed**, and the judgment and decree rendered by the learned First Appellate Court merit full affirmation.

16. As a natural corollary to the final adjudication of the substantive lis, it follows that the fate of all ancillary proceedings must likewise be determined. Accordingly, all pending miscellaneous applications, if any, arising from or incidental to the present matter, shall stand disposed of by necessary implication. Having regard to the conclusions reached here-in-above, no separate or distinct orders are warranted in respect of such applications, their continuance having been rendered purely academic and wholly infructuous.

( **VIRINDER AGGARWAL**)  
**JUDGE**

**28.01.2026**  
Gaurav Sorot

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No

GAURAV SOROT  
2026.01.28 17:29  
I attest to the accuracy and  
integrity of this document