



**E HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-2682-1997 (O&M)

Reserved on :-04.05.2026

Date of Pronouncement:-12.05.2026

Uploaded on:-12.05.2026

Manju

... Appellant

Versus

Gaushala Fazilka through its President and Another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. P.S. Khurana, Advocate with
Mr. Gurvinder Pal Singh, Advocate;
Ms. Sukhmandeep Kaur, Advocate;
Mr. Tanish Dahuja, Advocate and
Mr. Anirudh, Advocate for the appellants.

Mr. Rajesh Narang, Advocate
for the respondent No.1.

VIRINDER AGGARWAL, J.

1. The appellant-plaintiff, being deeply aggrieved by the decree and judgment dated 22.04.1997, rendered by the learned Additional District Judge, Ferozepur, respectfully invokes the appellate jurisdiction of this Hon'ble Court by way of this Regular Second Appeal (for short to be referred as 'RSA'). By virtue of the assailed judgment, the learned Lower Appellate Court erroneously reversed the well-reasoned findings and decree dated 19.12.1995, pronounced by the learned Additional Civil

Judge (Senior Division), Fazilka, which had originally enured to the benefit of the appellant.

1.1. The appellant seeks the restoration of the decree lawfully granted by the learned Trial Court and prays for appropriate redress against the substantial miscarriage of justice occasioned by the first appellate determination. It is respectfully submitted that the impugned judgment and decree are vitiated by manifest perversity, egregious errors of law, and a fundamentally flawed appreciation of the evidentiary record. The appellant contends that the reversal of the court of first instance is legally unsustainable and has resulted in grave injustice; therefore, it is prayed that this Court set aside the impugned decree and reinstate the well-considered judgment of the learned Trial Court.

2. The sequence of events leading up to, and culminating in, the present appeal may be succinctly delineated as follows:-

Originally, Karam Chand, son of Boota Ram, was the owner of land measuring 2 kanals and 19 marlas. By virtue of a consent decree dated 05.06.1972, the said Karam Chand transferred the suit land, along with certain other parcels, in favour of the plaintiff-Manju. In the plaint, the plaintiff has asserted her ownership over the suit property and has averred that the defendants, taking undue advantage of her absence and without her consent, unlawfully trespassed upon the suit land and raised unauthorized and haphazard constructions thereon. It is alleged that the defendants are in illegal and unauthorised possession of the suit property.

It has further been pleaded that the cause of action arose approximately one week prior to the institution of the suit, when the defendants, despite demand, categorically refused to restore possession of the suit land to the plaintiff. Hence the suit.

3. Upon service of notice, the defendants namely Gaushala Fazilka through its President and Manager entered appearance and filed a written statement contesting the suit. By way of preliminary objections, it was contended that the suit was undervalued for the purposes of Court fee and jurisdiction, particularly in view of the construction allegedly raised on the suit land at a substantial cost. The defendants further pleaded long-standing possession of over five decades and asserted title by way of adverse possession.

3.1. It was additionally averred that the plaintiff was estopped by her conduct, having acquiesced to the construction raised in her knowledge as well as that of the previous owner. Objections were also taken regarding absence of proper demarcation and non-filing of a site plan in accordance with the applicable Rules and Orders. The defendants maintained that the plaintiff had obtained the property through a consent decree with full knowledge of their possession, thereby rendering the suit barred by limitation.

3.2. On merits, the defendants denied the plaintiff's claims and reiterated their continuous possession for over 50–60 years, asserting that the construction was raised with the knowledge of the plaintiff's predecessor-in-interest. In replication, the plaintiff refuted the said

averments and reaffirmed the assertions made in the plaint, specifically denying the defendants' possession as alleged.

4. Upon a meticulous and comprehensive examination of the pleadings, documentary material, and rival submissions advanced by the parties, the Court deemed it appropriate to crystallize the matters in controversy and, for the purpose of an effective and adjudicatory determination of the rights and liabilities of the parties, proceeded to frame the following issues for consideration:-

1. *Whether the plaintiff is owner in possession of the xuxx vacant site? OPP.*
2. *Whether the defendant has become owner of the suit property by way of adverse possession? OPD*
3. *Whether the plaintiff is estopped by her act and conduct to file the suit ? OPD*
4. *What is the effect of not filing the site plan of the suit property? OPD*
5. *Whether the suit is not properly valued for the purpose of court fee and jurisdiction ? OPD.*
6. *Whether the suit is not within limitation? OPD.*
7. *Relief.*

5. Both parties were afforded adequate and meaningful opportunity to adduce evidence in support of their respective pleadings. Upon culmination of the trial and after hearing learned counsel for the parties, the learned Trial Court, on an appraisal of the issue-wise findings, proceeded to decree the suit of the plaintiff. It was held that the plaintiff is entitled to possession of the vacant suit property measuring 2 kanals and 19 marlas, as fully described in the headnote of the plaint, after removal of

the structures raised thereon by the defendants at their own cost. The defendants were granted a period of two months to remove the said construction, failing which the plaintiff was held entitled to recover possession through due process of law, including execution through the agency of the Court.

6. Aggrieved by the said judgment and decree, the defendants preferred an appeal before the learned First Appellate Court. The appellate Court, upon consideration of the matter and for the reasons recorded in its judgment, allowed the appeal, set aside the impugned judgment and decree passed by the learned Trial Court, and consequently dismissed the suit of the plaintiff with costs.

6.1. Aggrieved by and dissatisfied with the findings recorded by the learned First Appellate Court, the appellant–plaintiff has instituted the present appeal. The same was admitted for hearing vide order dated **13.01.1998**, whereupon notice was issued to the respondents. Respondent No.1 entered appearance through counsel and contested the appeal. The records of the Courts below have been requisitioned and are available on the Digital Management System (DMS) for comprehensive scrutiny and adjudication.

7. I have heard learned counsel for the parties at considerable length and have accorded my anxious and thoughtful consideration to their respective submissions, in the backdrop of the pleadings on record, the evidentiary material adduced, 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 appellant–plaintiff vehemently contended that the findings recorded by the learned Courts below are unsustainable in law, having been founded upon mere surmises and conjectures. It was argued that the learned Trial Court had rightly concluded that the respondents–defendants had failed to establish hostile possession to the knowledge of the appellant–plaintiff, whereas the learned First Appellate Court gravely erred in reversing the said findings on wholly untenable considerations. According to learned counsel, the mere fact that the respondents–defendants had allegedly raised construction over the suit property more than twelve years earlier could not, ipso facto, confer title by way of adverse possession in the absence of cogent evidence establishing the essential ingredients thereof.

9.1. It was further contended that the burden to prove adverse possession squarely lies upon the party asserting title on that basis. It is a settled principle of law that mere possession, however long in duration, does not ripen into ownership unless such possession is proved to be open, continuous, hostile, and to the clear knowledge of the true owner. Learned counsel submitted that, in the present case, there is no material on record demonstrating that the possession of the respondents–defendants was ever hostile to the true owner or that they had, at any point of time, asserted ownership rights openly and unequivocally to the knowledge of the appellant–plaintiff.

9.2. It was further argued that the learned First Appellate Court committed a manifest error in observing that pleadings before Civil Courts are loosely drafted and, therefore, even in the absence of a specific and properly constituted plea of adverse possession in the written statement, the respondents–defendants could still be held to have perfected title by adverse possession.

10. Per contra, learned counsel appearing on behalf of the respondents–defendants contended that the judgment rendered by the learned First Appellate Court suffers from no illegality or infirmity warranting interference by this Court. It was submitted that the learned First Appellate Court has rightly held that the respondents–defendants have remained in uninterrupted possession of the suit property for more than fifty years. During this period, they had raised construction over the suit land, erected boundary walls, and continued in actual, open, and

physical possession thereof to the knowledge of the predecessor-in-interest of the appellant–plaintiff. Their possession, according to learned counsel, was open, hostile, unequivocal, and adverse to the title of the plaintiff, and therefore the findings recorded by the learned First Appellate Court deserve to be affirmed.

11. The learned First Appellate Court, while recording its findings in paragraph No.13 of the impugned judgment, observed as under:-

"It has been last contended that the defendants have not pleaded proper ingredients in proving the adverse possession therefore they cannot be say that they have become the owner of the suit land by way of adverse possession. I don't find any force in this contention raised on behalf of the respondent- plaintiff. However, the written statement has been loosely drafted but if a close scrutiny is given to the written statement, then one can reach the conclusion that the defendants have pleaded all the material facts in order to constitute the ownership by way of adverse possession. The Court cannot lose sight of the fact that in India, the pleadings are loosely drafted. The Court is not to take into consideration a specific line or a para, but to read the pleadings as a whole. In addition to the pleadings taken by the defendants in their written statement, DW1 Raj Kishan in his examination specifically stated that defendants are in possession over the suit land for the last 40 years."

12. A careful perusal of the written statement filed by the respondents–defendants assumes considerable significance for determining the sustainability of the plea of adverse possession. In the preliminary objections, the respondents–defendants averred, firstly, that the suit had not been properly valued for the purposes of court fee and jurisdiction. In the

second preliminary objection, it was pleaded that defendant No.1—*Gaushala* had occupied the suit property nearly 50 years earlier and had, therefore, allegedly perfected title by way of adverse possession. By way of the third preliminary objection, a plea of estoppel was raised against the appellant—plaintiff on the assertion that the plaintiff, despite being aware of the construction allegedly raised by the *Gaushala* and its continued occupation of the property, remained inactive and failed to assert his rights.

12.1. In the fourth preliminary objection, the respondents—defendants disputed the identity of the suit property, while in the fifth preliminary objection it was contended that the suit was liable to fail for want of a proper site plan. Significantly, there was no sixth preliminary objection. In the seventh preliminary objection, it was merely asserted that the appellant—plaintiff had knowledge of the occupation of the suit property by defendant No.1.

12.2. On merits, the respondents—defendants pleaded that the appellant—plaintiff had failed to place on record any authenticated site plan of the suit property and further asserted that the defendants had been in occupation thereof for the last 50–60 years. It was additionally averred that although the appellant—plaintiff allegedly became owner of the property in the year 1973, the possession of the respondents—defendants predated such ownership and that the construction in question had been raised openly in the presence and to the knowledge of the plaintiff, his predecessors-in-interest, and the previous owners of the property. It was further pleaded that the plaintiff never objected to such possession or construction.

13. These constitute the material pleadings forming the foundation of the defence set up by the respondents–defendants. It is a settled and fundamental principle of civil jurisprudence that a civil suit must be adjudicated strictly on the basis of the pleadings of the parties, which constitute the foundational framework of their respective claims and defences. Any evidence adduced beyond the scope of the pleadings is legally impermissible and liable to be eschewed from consideration. The learned First Appellate Court, however, fell into manifest error in observing that deficiencies in pleadings could be supplemented or cured through evidence. Such an approach runs contrary to the settled proposition of law that no amount of evidence can be permitted to fill the lacunae in pleadings, and any evidence *dehors* the pleadings cannot be looked into for the purpose of adjudication.

14. A careful examination of the written statement reveals that there is no specific or categorical averment to the effect that the possession of defendant No.1–Gaushala was ever hostile to the title of the appellant–plaintiff. Equally, there is no pleading that the said defendant had, at any point of time, expressly or impliedly repudiated the ownership of the plaintiff or his predecessors-in-interest, or that it had asserted an independent title in itself to the knowledge of the true owner. The foundational ingredients necessary to constitute a legally sustainable plea of adverse possession are, therefore, conspicuously absent from the pleadings of the respondents–defendants.

15. It is a well-settled and firmly entrenched principle of law that mere possession, irrespective of its duration, does not ipso facto mature into ownership unless such possession is proved to be open, continuous, hostile, and unequivocally adverse to the true owner. The doctrine of adverse possession necessarily postulates a clear denial of the title of the lawful owner coupled with an assertion of hostile animus. In this regard, the Hon'ble Supreme Court in ***T. Anjanappa and Others versus Somalingappa and Another, 2006 INSC 536***, authoritatively held as under:-

“22. It is well recognised proposition in law that mere possession however long does not necessarily means that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action.”

16. It is a settled principle of law that the classical requirements for the acquisition of title by adverse possession encapsulated in the doctrine of *nec vi, nec clam, nec precario* demand that such possession be

peaceful, open, continuous, and in explicit denial of the true owner's title. In the instant case, the written statement filed by the respondent-defendant (*Gaushala*) fatally undermines this claim; the title of the appellant-plaintiff and their predecessors was never expressly denied, nor did the respondent-defendant assert an independent title at the first instance. Absent a clear and hostile animus to possess, the mere occupation of the land does not ripen into legal ownership.

17. Consequently, the findings recorded by the learned First Appellate Court are legally unsustainable. It cannot be judicially concluded that the respondent-defendant perfected its title over the suit property via adverse possession, particularly in the absence of specific pleadings to that effect. It is a fundamental tenet of civil jurisprudence that a claim for adverse possession must be supported by precise averments regarding the date of commencement and the nature of the hostile occupation. Since the mandatory ingredients of adverse possession were not pleaded in the written statement, the reversal of the Trial Court's judgment was erroneous. Accordingly, the appeal is **allowed**; the judgment and decree passed by the learned First Appellate Court are hereby set aside, and the decree of the learned Trial Court is restored.

18. Upon the final adjudication of the principal matter on its merits, all ancillary, interlocutory, or pending applications currently subsisting on the record shall, by necessary implication, stand disposed of. In view of the definitive conclusions reached herein, no separate or

independent orders are required in respect thereof, as the same have been rendered infructuous.

12.05.2026
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

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