

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

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**RSA-2220-2001 (O&M)****RAM KISHAN AND OTHERS**

. . . . Appellants

**Vs.****RAM KALA AND OTHERS**

. . . . Respondents

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**Reserved on: 20.02.2026****Pronounced on: 23.02.2026****Pronounced Fully/Operative Part: Fully**

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**CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA**

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Present: - Mr. M.L. Sarin, Senior Advocate with  
Ms. Himani Sarin, Advocate for the appellants  
except appellant No.8(iii).

Mr. Rajesh Garg, Sr. Advocate with  
Ms.Neha Matharu, Advocate,  
for appellant No.8(iii) [through VC].

Mr.J.P. Jangu, Advocate,  
for respondent Nos. 1 to 5.

Mr. Amit Jain, Senior Advocate with  
Ms. Aeshna Jain, Advocate for  
respondent Nos. 7 to 9.

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**DEEPAK GUPTA, J.**

The plaintiffs are before this Court in the present Regular Second Appeal challenging the concurrent findings, whereby their suit for declaration, permanent injunction and challenge to mutation was dismissed by the learned Civil Judge (Junior Division), Nuh on 19.04.2000, and the appeal preferred there against was partly accepted to the effect that defendants-respondents are restrained from disturbing possession of the plaintiffs-appellants over the

parcels of land in their cultivating possession till partition, by the learned Additional District Judge, Gurugram on 31.03.2001.

2. For convenience, the parties are referred to as per their status before the trial Court. The trial Court record, as available on DMS, has been perused.

3. **Admitted Facts :** The suit property comprises three parcels forming part of a single Khewat No.241, though reflected in different Khatoni numbers 308, 309 and 310, situated in village Jaurasi, Tehsil Nuh, District Gurugram. As per the plaint, land measuring 30 kanal 12 marla forming part of Khatoni No.308 is detailed in paragraph 1 (a); land measuring 157 kanal 15 marla comprised in Khatoni No.309 is detailed in paragraph 1 (b); and land measuring 9 kanal 1 marla forming part of Khatoni No.310 is described in paragraph 2 of the plaint.

4.1 **Pleadings :** According to the plaintiffs, the total land comprised in Khewat No.241 measured 307 kanal 14 marla, out of which one Jormal was recorded as co-owner to the extent of one-half share. In the remaining half share, the plaintiffs/their predecessors were recorded one-fourth share, whereas the predecessors of defendants were recorded to be owners to the extent of three-fourth share. Jormal was pleaded to be an absentee co-sharer. It was further averred that Jormal had instituted proceedings seeking partition of his half share against the parties to the present litigation / their predecessors-in-interest. The said proceedings were jointly contested by the predecessors of both sides on the plea that Jormal had lost his rights in the property on account of abandonment and adverse possession.

4.2 The partition proceedings instituted by Jormal were dismissed by the Assistant Collector Ist Grade, Nuh on 17.05.1978, who held that Jormal had lost his title by abandonment and adverse possession. The appeal preferred by Jormal was dismissed by the learned Additional District Judge, Gurugram on 21.01.1980, thereby affirming the said finding and resulting in extinguishment of Jormal's right, title and interest in the suit property. It was also pleaded that

Jormal had expired approximately ten years prior to the institution of the suit and neither he nor his successors ever sought correction of the revenue record.

4.3 The plaintiffs further pleaded that although the earlier proceedings were jointly contested by the predecessors of both parties, the inter se rights of the present parties arising out of extinguishment of Jormal's share were not adjudicated therein. It was averred that mutation No.1758 dated 18.10.1995 was later sanctioned in favour of the parties. The plaintiffs challenged the said mutation as illegal, null and void, alleging that the same had been sanctioned behind their back in collusion with the defendants.

4.4 The plaintiffs asserted exclusive possession over the land described in paragraph 1 (a) of the plaint, contending that despite the revenue entries showing joint possession, they and their predecessors had been cultivating the said land for more than fifty years. On that basis, the plaintiffs claimed to have acquired ownership by adverse possession qua the share of Jormal. It was further pleaded that the plaintiffs were entitled to be recorded in the revenue record in place of Jormal with respect to the entire land described in paragraphs 1 (a) and 1 (b) of the plaint. With respect to the land detailed in paragraph 2, it was specifically asserted that plaintiff No.5 and his predecessors were in exclusive possession of Jormal's share and had consequently acquired ownership thereof by abandonment and adverse possession. The plaintiffs alleged that the defendants were wrongly recorded in the impugned mutation despite never having been in possession of the suit land.

4.5 The plaintiffs sought a declaration that the mutation No.1758 dated 18.10.1995 was null and void and not binding upon their rights, along with a decree of declaration recognising the plaintiffs as exclusive owners in possession of the land detailed in paragraphs 1 (a) and 1 (b), and plaintiff No.5 as exclusive owner in possession of the land described in paragraph 2 of the plaint. A consequential decree of permanent injunction restraining interference by the defendants was also sought.

5. The defendants contested the suit and raised preliminary objections, including the plea of res judicata on the basis of the earlier decree passed by the Assistant Collector 1st Grade, Nuh and affirmed by the learned Additional District Judge, Gurugram on 21.01.1980, whereby the parties or their predecessors were held to be joint owners in possession of the land forming part of Khewat No.241. The defendants denied the plea of exclusive possession and asserted that the parties continued to be co-sharers in joint possession. The earlier litigation initiated by Jormal was admitted, and mutation No.1758 dated 18.10.1995 was defended as valid.

6. In the rejoinder, the plaintiffs reiterated their pleadings and controverted the stand of the defendants.

7. ***Findings of courts below :*** On the basis of the pleadings, necessary issues were framed and the parties led evidence. Upon appreciation of the evidence, the learned trial Court held that the parties were co-owners of the entire joint holding and that the plaintiffs could not claim exclusive ownership by adverse possession. The trial Court further held that the plaintiffs were estopped from asserting exclusive ownership in view of their earlier findings and the nature of the joint holding. Consequently, the suit was dismissed on 19.04.2000.

8. The appeal preferred by the plaintiffs was partly accepted by the learned Additional District Judge, Gurugram on 31.03.2001, affirming the findings of the trial Court.

9.1 ***Contentions of appellants :*** Assailing the concurrent findings recorded by the Courts below, learned Senior Counsel appearing for the plaintiffs–appellants contends that both Courts below have fallen into error in proceeding on the assumption that the plaintiffs were asserting adverse possession against the defendants. It is argued that the consistent case of the plaintiffs, as borne out from the pleadings and evidence, is that they are owners in possession of the suit land qua the half share earlier held by Jormal, who had lost his rights by abandonment and adverse possession. Learned counsel submits

that the plaintiffs had been in exclusive possession of the suit land for decades and that such possession entitled them to be recorded as owners in place of Jormal.

9.2 Learned Senior Counsel further submits that the plaintiffs do not claim adverse possession against the defendants and that their claim is confined only to the share of Jormal. According to him, the rights of the plaintiffs flow from their actual and continuous possession over the land previously held by Jormal and not from any hostile assertion against the defendants.

9.3 During the course of hearing, upon a specific query put by the Court, learned Senior Counsel for the appellants fairly conceded that in the earlier litigation instituted by Jormal, the predecessors of the present plaintiffs (*arrayed as defendants No.1 to 9 therein*) and the predecessors of the present defendants (*arrayed as defendants No.10 and 11 therein*) had filed a joint written statement contesting the claim of Jormal. It was also conceded that the plaintiffs had not asserted exclusive possession over any specific portion of the suit land in those proceedings. Learned counsel, however, attempted to explain that the plaintiffs were in actual possession even at that stage and that no separate assertion inter se was made, as there was no dispute between the parties at that time.

10.1 ***Response by respondents*** : Refuting the submissions advanced on behalf of the appellants, learned Senior Counsel appearing for the respondents—defendants submits that prior to the institution of proceedings by Jormal, the revenue record reflected Jormal as co-owner to the extent of one-half share; Paltu and Bhajan Lal, predecessors of the defendants, as co-owners to the extent of three-eighth share; and plaintiffs/ their predecessors as co-owners to the extent of one-eighth share. It is contended that possession of the co-sharers was recorded to be joint over different parcels of the joint holding, except that Jormal was not in actual cultivating possession. Learned counsel submits that once Jormal lost his rights in the earlier proceedings, the remaining co-sharers became entitled to the property only in accordance with their respective shares, resulting in the plaintiffs being entitled to one-fourth share in the total holding and the defendants to three-fourth share.

10.2            Learned Senior Counsel for the respondents further contends that both Courts below have correctly appreciated the evidence and the revenue record and that no ground exists for interference with the concurrent findings.

10.3            It is argued that since the plaintiffs and defendants had jointly contested the earlier proceedings without asserting exclusivity, the plaintiffs are estopped from now claiming exclusive ownership of the land comprised in Jormal's share. It is further submitted that the decree passed in the earlier proceedings has attained finality and binds the parties.

10.4            On the basis of the above submissions, learned Senior Counsel for the respondents has prayed for dismissal of the present appeal.

11.            I have heard learned Senior Counsel for the parties and have carefully perused the record of the case as well as the judgments passed by the Courts below.

12.            ***Discussion and Reasons*** : The principal contention raised on behalf of the appellants is that the Courts below erred in proceeding on the premise that the plaintiffs were asserting adverse possession against the defendants. According to learned Senior Counsel, the claim of the plaintiffs was confined to the share earlier held by Jormal, who had admittedly lost his rights by abandonment and adverse possession in the earlier proceedings. It is contended that since the plaintiffs had remained in exclusive cultivating possession of the land for a long period, they alone were entitled to succeed to the share of Jormal.

13.            This submission, however, does not merit acceptance. It is an admitted position that the land in dispute formed part of a joint khewat and that the parties are co-sharers therein. It is equally undisputed that no partition has taken place inter se the parties. The settled legal position is that possession of one co-sharer in joint property is, in the eye of law, possession on behalf of all co-sharers. A co-sharer cannot claim exclusive ownership merely on the basis of separate cultivation of specific parcels unless he establishes ouster of the other co-sharers by clear, cogent and unequivocal evidence.

14. In the present case, neither the pleadings nor the evidence disclose any assertion of ouster against defendants. The plaintiffs' own stand, as clarified during arguments, is that they do not claim adverse possession against the defendants. Once the relationship of co-sharership is admitted and adverse possession against defendants/ co-sharers is disclaimed, the plea of exclusive ownership over specific parcels of joint property becomes legally untenable.

15. The contention that the plaintiffs alone succeeded to the share of Jormal is also misconceived. The earlier proceedings instituted by Jormal resulted merely in extinguishment of his rights and the enlargement of the shares of the remaining co-sharers in accordance with their existing entitlement. The said proceedings did not determine any inter se exclusivity between the present parties, nor did they confer exclusive title upon the plaintiffs.

16. Significantly, it stands admitted that in the earlier litigation, the predecessors of both parties had jointly contested the claim of Jormal without asserting exclusive possession against each other. The absence of such plea at the relevant time and the joint defence adopted by the parties strongly militate against the subsequent claim of exclusivity raised by the plaintiffs.

17. The revenue record placed on file consistently reflects joint ownership and does not support the plea of ouster. Even if the plaintiffs were cultivating certain parcels of land, such possession would be referable to their status as co-sharers and cannot be construed as hostile possession against the other co-sharers.

18. The challenge to mutation is equally devoid of substance. Mutation entries neither create nor extinguish title and are only maintained for fiscal purposes. In any case, the mutation in question merely reflects the shares of the parties consequent to the earlier decree and does not adversely affect any substantive right of the plaintiffs.

19. The Courts below have concurrently held that the parties are co-owners in joint possession; that the plaintiffs failed to establish adverse possession or ouster qua defendants; and that declaration of exclusive

ownership over specific khasra numbers cannot be granted in the absence of partition. These findings are based upon appreciation of oral and documentary evidence and cannot be said to suffer from perversity or misreading of evidence.

20. It is also pertinent that the learned First Appellate Court has already protected the possession of the plaintiffs over the parcels in their cultivation till partition. The said protection sufficiently balances the equities between the parties and preserves the possession of the plaintiffs without disturbing the joint nature of the holding.

21. The present appeal, in substance, seeks re-appreciation of evidence and substitution of concurrent findings of fact, which is impermissible within the limited jurisdiction of this Court under Section 100 of the Code of Civil Procedure. No substantial question of law arises for consideration.

22. **Conclusion and Order :** In view of the discussion above, this Court finds no illegality, perversity or jurisdictional error in the concurrent findings recorded by the Courts below. The plaintiffs have failed to establish any legal basis for claiming exclusive ownership of the suit property in the absence of proof of ouster or partition. The protection granted by the First Appellate Court with respect to the possession of the plaintiffs over the parcels in their cultivation shall continue to operate till the joint holding is partitioned in accordance with law.

23. Consequently, the present Regular Second Appeal is dismissed. Pending application(s), if any, also stand disposed of.

23.02.2026

*Vivek*

Whether Speaking/reasoned

Whether reportable

(DEEPAK GUPTA)

JUDGE

Yes

No

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