



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

RSA-2912-2001

Ram Chander and Others

. . . . Appellants

Vs.

Ghisa Ram and Another

. . . . Respondents

Reserved on: 10.04.2026

Pronounced on: 17.04.2026

Pronounced fully/operative part: Fully

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Argued by:- Mr. Raj Kumar Gupta, Advocate with
Mr. G.S. Bidlan, Advocate for the appellant.

Mr. Ajay Jain, Advocate for
the respondents.

DEEPAK GUPTA, J.

The present appeal is directed against the judgment & decree dated 03.03.2001 passed by the learned First Appellate Court, whereby the judgment of the trial Court dated 14.12.1996 was set aside, and the suit filed by the plaintiffs for declaration, was decreed.

2. With the assistance of learned counsel for the parties, the record of the Courts below has been carefully perused. For the sake of convenience, the parties are referred to as per their status before the trial Court.

3. The controversy arises out of a joint khewat measuring 70 Kanal 6 Marla, in which one Gordhan owned 1/3rd share. Upon his demise, his share devolved upon his three sons, namely Ram Chander (defendant No.2), Kishori Lal and Ram Narain, each to the extent of 1/9th share. It is an admitted position on record that defendant No.2, despite being owner only to the extent of 1/9



share i.e., 7 Kanal 16 Marla, executed a sale deed dated 28.09.1965 in favour of defendant No.1 for 8 Kanal 15 Marla of land, thereby purporting to transfer land in excess of his lawful share. The remaining co-sharers Kishori Lal and Ram Narain subsequently sold their 2/9 shares in 1966 to Kanhi Ram, predecessor-in-interest of the plaintiffs, whose legal heirs instituted the present suit in March 1992 seeking a declaration to the effect that the aforesaid sale deed, to the extent it exceeded the share of defendant No.2, was illegal and not binding.

4. Defendant No.2 was proceeded against ex parte. Defendant No.1 contested the suit, asserting ownership over 8 Kanal 15 Marla on the basis of the sale deed dated 28.09.1965. He further claimed that his long, continuous possession since 1965 had matured into ownership by adverse possession. Additionally, he raised objections that the suit was barred by limitation, and was bad for non-joinder of necessary parties, namely other co-sharers, and accordingly sought dismissal of the suit.

5. The trial Court after appreciating evidence led by the parties, dismissed the suit, inter alia, holding that defendant No.1 was a bona fide purchaser in possession since 1965; that the suit was barred by limitation; that the plaintiffs lacked locus standi, and further that defendant No.1 had perfected his title by way of adverse possession.

6. However, in appeal, the learned First Appellate Court reversed these findings and decreed the suit by holding that a co-sharer cannot transfer more than his own share; that such a transfer to the extent of excess is a nullity; that the suit was not barred by limitation in the case of joint property, and that the plea of adverse possession was not available to defendant No.1 being a co-sharer.

7. Assailing the aforesaid judgment, learned counsel for the appellants has contended that defendant No.1 has remained in open, continuous and exclusive possession of the suit land since the date of purchase in the year 1965 and that such possession, being hostile to the knowledge of other co-sharers,



has ripened into ownership by adverse possession. It has further been argued that the suit having been filed after more than 26 years from the date of sale deed is hopelessly barred by limitation.

8. On the other hand, learned counsel for the respondents has supported the judgment of the First Appellate Court by contending that the parties are co-sharers in a joint khewat, that possession of one co-sharer is deemed to be possession on behalf of all, and that in the absence of proof of ouster, no plea of adverse possession can be sustained.

9. Having considered the rival submissions, this Court finds no merit in the present appeal.

10. It is a settled principle of law that no person can convey a better title than what he himself possesses. Defendant No.2, being admittedly owner only to the extent of 1/9th share, had no authority to transfer land beyond his share. In the context of joint property, a co-sharer may transfer his undivided share, but he cannot convey a specific portion in excess of his entitlement so as to prejudice the rights of other co-sharers. Any such transfer is necessarily subject to adjustment at the time of partition and cannot confer an indefeasible right upon the vendee. The First Appellate Court has, therefore, rightly held that the sale deed dated 28.09.1965, to the extent it exceeds the share of defendant No.2, is ineffective and liable to be ignored.

11. The contention regarding limitation is equally devoid of any merit. In a case of joint holding, each co-sharer is deemed in law to be in possession of every inch of the joint property, irrespective of actual physical possession. Mere exclusive possession by one co-sharer does not amount to exclusion of others unless there is clear and unequivocal evidence of ouster. Consequently, a transaction whereby a co-sharer transfers more than his share does not necessarily give rise to an immediate cause of action requiring challenge within a fixed period, particularly when the property remains joint and unpartitioned. Such a transaction can be questioned or ignored at the time of partition. The finding of



the First Appellate Court that the suit is not barred by limitation thus calls for no interference.

12. Equally untenable is the plea of adverse possession raised by defendant No.1. It is well settled that a person, who claims title under a lawful transaction cannot simultaneously assert hostile possession against the true owner. The plea of adverse possession presupposes that the possession is hostile to the title of another, which is inconsistent with a claim based on a sale deed. Furthermore, as between co-sharers, the law requires strict proof of ouster, namely, an open and hostile assertion of exclusive title to the knowledge of other co-sharers. Mere long or exclusive possession is not sufficient.

13. In the present case, defendant No.1 entered into possession on the basis of a sale deed and has failed to establish any overt act demonstrating denial of the rights of other co-sharers. In the absence of such evidence, the plea of adverse possession must fail.

14. The judgments titled ***“Kumehli and ors. vs. Moti and ors.” 1995(3) RRR 389*** and ***“Nanak Chand and ors. vs. Sononnu and ors.” 1982 PLJ 422***, relied upon by learned counsel for the appellants are distinguishable on facts. In those cases, there was either clear evidence of ouster or possession of the entire property under a claim of exclusive ownership.

15. In the present case, however, defendant No.1 is in possession only of a part of the joint holding and continues to be a co-sharer. Therefore, the said precedents do not advance the case of the appellants.

16. On an overall consideration of the matter, it is evident that the learned First Appellate Court has correctly appreciated both the facts and the law governing the rights of co-sharers, the doctrine of adverse possession, and the question of limitation in the context of joint property. The findings recorded by it are neither perverse nor contrary to law so as to warrant interference by this Court.

17. On account of entire discussion as above, it is held that there is no merit in the present appeal. There is no reason to interfere in the well-reasoned findings recorded by the first Appellate Court, which are hereby upheld. The present appeal is hereby dismissed.

(DEEPAK GUPTA)
JUDGE

17.04.2026
Neetika Tuteja

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

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