



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(209)

CR-2631-2024

Date of decision: - 28.04.2026

SURJEET SINGH @ SHEETAL SINGH @ SARJEET SINGH

....Petitioner

Versus

GHAIN KAUR @ AVINDER KAUR AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Rajinder Kumar Singla, Advocate
for the petitioner.

Mr. Ashim Singla, Advocate
for respondents No.1 to 3.

Mr. Nilesh Bhardwaj, Advocate, and
Mr. Dushyant Singh, Advocate
for respondents No.4 and 5.

Mr. Vineet Sehgal, Advocate, and
Mr. Raj Pal, Advocate
for respondent No.6.

VIKAS BAHL, J. (ORAL)

CHALLENGE IN THE PRESENT REVISION PETITION

1. Present civil revision petition has been filed under Article 227 of the Constitution of India for setting aside/quashing of order dated 04.12.2023 (Annexure P-16) passed by the Addl. Civil Judge (Senior Division), Tohana, Fatehabad, in CS No.104/2023 instituted on 22.02.2023 titled as "Sujreet Singh @ Sheetal Singh Vs. Ghain Kaur @ Arvinder Kaur etc, vide which the trial Court has dismissed the application of the petitioner under Order 39 Rule 1 and 2 read with



Section 151 CPC (Annexure P-2). Challenge is also to the order dated 16.04.2024 (Annexure P-18), vide which the appeal against order dated 04.12.2023 filed by the petitioner has also been dismissed.

ARGUMENTS ON BEHALF OF THE PETITIONER

2. Learned counsel for the petitioner has submitted that the petitioner had filed a suit for declaration to the effect that he is the owner in possession of the agricultural land measuring 32 Kanal 8 marla comprised in khasra number, which has been mentioned in the headnote of the plaint, on the basis of adverse possession and had also challenged the entries in the revenue record as well as the sale deeds executed by defendants No.4 and 5 in favour of defendant No.6 and also the exchange deed between defendants No.4 and 6. It is further submitted that it was the case of the plaintiff that his father, Harbans Singh, was the original owner of the said land measuring 32 kanal 8 marla and since Kharif 2000, the plaintiff had been cultivating the suit land and during the life time of his father, he had never objected to the possession of the plaintiff of the suit land and the same has been in possession of the plaintiff without him having paid any rent in cash or kind.

3. It is argued that the father of the plaintiff, Harbans Singh, had died on 09.01.2003 and even thereafter the plaintiff has continued to be in possession of the suit property and defendants No.1 to 5 had never objected to his possession and had the knowledge of the same and since the period of 12 years has elapsed from the time of his possession thus, the plaintiff has a prima facie case in his favour. It is submitted that



the orders passed by the trial Court as well as by the 1st Appellate Court rejecting the application of the petitioner/plaintiff are not in accordance with law and deserve to be set aside. It is pointed out that at the initial stage, the trial Court had granted *ad interim* order of status quo regarding possession of the suit property till the next date of hearing, which also shows that the trial Court, at the initial stage, was *prima facie* convinced that the petitioner/plaintiff has a *prima facie* case in his favour.

ARGUMENTS ON BEHALF OF RESPONDENTS NO.4 TO 6

4. Learned counsel for contesting respondents No.4 to 6 have submitted that the plaintiff and defendants No.3 to 5 are brothers and defendants No.1 and 2 are the sisters of the plaintiff as well as of defendants No.3 to 5 and thus, they all are related to each other. It is further submitted that it is not in dispute that Harbans Singh, father of the plaintiff and defendants No.1 to 5 was the original owner of the land measuring 32 kanal 8 marla and after his death on 09.01.2003, seven persons including plaintiff and defendants No.1 to 5 inherited the estate of the said Harbans Singh and thus, all the said persons are co-sharers in the property in question. It is argued that it is a matter of settled law that every co-sharer is entitled to each and every inch of the land which is presumed to be in possession of all till the time the land is partitioned. It is further argued that in the written statements the said defendants have taken a specific plea that the plaintiff was not in exclusive possession of the land in question and defendant No.6 was a bona fide purchaser for a valuable consideration and the present suit filed by the plaintiff/petitioner



was frivolous and deserves to be dismissed.

5. It is submitted that the partition proceedings in the present case had been instituted by defendant No.6 on 29.06.2022 and the Sanad Takseem has also been prepared in the said case and it is on account of the interim order in favour of the petitioner in the present revision petition that further proceedings, after the preparation of Sanad Takseem, are stalled. It is submitted that the suit in the present case had been filed in the year 2023 which is after the filing of the said partition suit and the same is only to delay the said partition proceedings. It is prayed that the impugned orders be upheld and the revision petition filed by the petitioner be dismissed.

ARGUMENTS ON BEHALF OF RESPONDENTS NO.1 TO 3

6. Learned counsel appearing for respondents No.1 to 3 has submitted that respondents No.1 to 3 had admitted the claim of the petitioner/plaintiff and even at present is admitting the claim of the petitioner before this Court.

ARGUMENTS IN REBUTTAL ON BEHALF OF THE PETITIONER

7. Learned counsel for the petitioner, in rebuttal, has submitted that the petitioner/plaintiff has filed a revision before the Commissioner after the issuance of the Sanad Takseem and has availed his remedy against the partition proceedings in accordance with law.

ANALYSIS AND FINDINGS

8. This Court has heard learned counsel for the petitioner as well as learned counsel for the respondents and is of the opinion that the



impugned orders are in accordance with law and deserve to be upheld and the present revision petition is meritless and deserves to be dismissed for the reasons stated hereinafter.

9. It is not disputed before this Court that initially the owner of the suit property measuring 32 kanal 8 marla of Khasra No.27//21/1 (4-0), 28//22(7-2), 23(7-2), 24(7-2), 25(7-2), Kitta-5 total 32K-8M comprised in Khewat No.152, Khatoni No.213 as per jamabandi for the year 2018-19 situated at Village Lohakhera, Tehsil Tohana, District Fatehabad was Harbans Singh, father of the plaintiff and defendants No.1 to 5, who are brothers and sisters. It is also not disputed that after the death of Harbans Singh on 09.01.2003, plaintiff and defendants No.1 to 5 as well as his widow, namely, Sawaran Kaur had inherited the said property in equal shares and thus, all of them became co-sharers. It is also not in dispute that the said Sawaran Kaur died on 28.09.2007 and her share was also sanctioned in favour of all the six children i.e. plaintiff and defendants No.1 to 5. The said defendants No.4 and 5 executed two sale deeds dated 30.05.2022 and 27.12.2022 with respect to their shares of land in the entire suit land measuring 32 kanal 8 marla in favour of defendant no.6 for valuable consideration and exchange deed was also executed on 30.05.2022 between defendant No.4 and 6.

10. It is also not disputed before this Court that the partition suit was filed by defendant No.6/respondent No.6 on 29.06.2022 i.e. prior to the filing of the present suit which was filed in the year 2023. It is the case of the respondents/defendants that Sanad Takseem has been prepared



in the same and it is the case of the plaintiff/petitioner that he has filed a revision against the said Sanad Takseem/instrument of partition before the Commissioner. It is further highlighted on behalf of respondents No.4 to 6 that in spite of the said Sanad Takseem having been already issued the possession as per the Sanad Takseem has not been given to all the co-sharers on account of the interim order passed in the present revision petition.

11. The present suit filed by the plaintiff is a suit for declaration to the effect that he is the owner in possession of the suit land measuring 32 kanal 8 marla on the basis of adverse possession. Challenge in the suit is also laid to the above-said sale deeds as well as the entries in the revenue record. The fact that Harbans Singh was the original owner of the suit property was stated in para 2 of the plaint. The contesting defendants No.4 to 6 had taken the pleas in the written statement to the effect that the plaintiff and defendants No.1 to 5 had inherited the estate of Harbans Singh and thus, the plaintiff as well as other defendants were co-sharers in the suit property and that the plea of adverse possession is not sustainable against the co-sharers. It was further the plea of the said defendants that the plaintiff was not in exclusive possession of the suit land. Defendant No.6 had taken the additional plea of being a bona fide purchaser for valuable consideration and has argued that the present suit had been filed only to delay the partition proceedings.

12. The trial Court vide order dated 04.12.2023 had dismissed the application filed by the petitioner under Order 39, Rules 1 and 2 of



CPC read with Section 151 CPC after observing that since all the said persons are co-sharers, thus, the plaintiff cannot claim, even if he is in possession, his possession to be adverse against the other co-shares as on each and every inch of land every co-sharer is presumed to be in possession. It is further observed that even as per the pleas of the plaintiff, it cannot be said that the possession of the plaintiff was hostile and exclusive to the other co-sharers. The trial Court has also observed that even in case the plea of the plaintiff to the effect that his father had given him the possession during his life time is taken on its face value, then the same is permissible possession and cannot be said to be adverse possession and had further observed that defendant No.6 was a bonafide purchaser and accordingly dismissed the application filed by the petitioner. The appeal filed by the petitioner was also dismissed by the 1st Appellate Court after taking into consideration the settled principle of law that one co-sharer cannot claim his possession to be adverse against other co-sharers. It was thus observed that the plaintiff had no prima facie case and that the grant of injunction would cause irreparable loss to the defendants/respondents including defendant No.6/respondent No.6, who is a bonafide purchaser and accordingly the appeal was dismissed. The orders passed by the Courts are in accordance with law and deserve to be upheld.

13. The Hon'ble Supreme Court in the case of "***M. Radheshyamlal Vs. V. Sandhya and another***", ***reported as 2024 SCC Online SC 318*** had placed reliance on the judgment of the Hon'ble



Supreme Court in ***Karnataka Board of Wakf Vs. Government of India*** reported as (2004) 10 SCC 779, in which, it was observed that for proving adverse possession, the party which takes the said plea has to show that his possession had started with a wrongful disposition of the rightful owner and thereafter that the unlawful possession is actual, visible, exclusive, hostile and continues over the statutory period and thus, for a person to claim ownership on the basis of adverse possession, he is required to show (i) as to on what date, he came into possession (ii) what was the nature of his possession (iii) whether the possession is open or undisturbed, (iv) whether the factum of possession was known to the other party or not, (v) how long his possession has continued. It was further observed that the person pleading adverse possession has no equities in his favour, since he is trying to defeat the rights of the true owner and, therefore, the plaintiff is required to clearly plead and establish all facts necessary to establish his adverse possession. Reference in the judgment of ***M.Radheshyamlal*** (Supra), has also been made to the judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of ***M. Siddiq (Ram Janmabhumi Temple-5 J.) Vs. Suresh Das*** reported as (2020) 1 SCC 1, in which it was observed that the plea of adverse possession is not to be readily accepted, unless a clear and cogent basis has been made out in the pleadings and thereafter established by the evidence. It was further observed that evidence can only be adduced with reference to the matters which have been pleaded in the civil suit and in the absence of adequate pleadings, evidence by itself cannot supply the



deficiency of a pleaded case. Relying upon the said judgment and other judgments, the Hon'ble Supreme Court in the abovesaid case of ***M.Radheshyamlal*** (Supra) had observed that since, the plea of adverse possession is based on continuous, wrongful possession for a period of more than 12 years thus, the facts constituting the ingredients of adverse possession must be pleaded and proved by the plaintiff. Relevant portion of the said judgment is reproduced hereinbelow:-

*“10. As far as the plea of adverse possession is concerned, a **Constitution Bench** of this Court in the case of **M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das**, in paragraph 1142 and 1143 has held thus:*

"1142 . A plea of adverse possession is founded on the acceptance that ownership of the property vests in another against whom the claimant asserts a possession adverse to the title of the other. Possession is adverse in the sense that it is contrary to the acknowledged title in the other person against whom it is claimed. Evidently, therefore, the plaintiffs in Suit No. 4 ought to be cognizant of the fact that any claim of adverse possession against the Hindus or the temple would amount to an acceptance of a title in the latter. Dr Dhavan has submitted that this plea is a subsidiary or alternate plea upon which it is not necessary for the plaintiffs to stand in the event that their main plea on title is held to be established on evidence. It becomes then necessary to assess as to whether the claim of adverse possession has been established.

1143. A person who sets up a plea of adverse possession must establish both possession which is peaceful, open and continuous possession which meets the requirement of being nec vi nec claim and nec precario. To substantiate a plea of adverse possession, the character of the possession must be adequate in continuity and in the public because the possession has to be to the knowledge of the true owner in order for it to be adverse.



These requirements have to be duly established first by adequate pleadings and second by leading sufficient evidence. Evidence, it is well settled, can only be adduced with reference to matters which are pleaded in a civil suit and in the absence of an adequate pleading, evidence by itself cannot supply the deficiency of a pleaded case. Reading Para 11(a), it becomes evident that beyond stating that the Muslims have been in long, exclusive and continuous possession beginning from the time when the Mosque was built and until it was desecrated, no factual basis has been furnished. This is not merely a matter of details or evidence. **A plea of adverse possession seeks to defeat the rights of the true owner and the law is not readily accepting of such a case unless a clear and cogent basis has been made out in the pleadings and established in the evidence."**

(underline supplied)

11. In the case of **Karnataka Board of Wakf v. Govt. of India**, in paragraph 11, this Court has laid down the law regarding the plea of adverse possession. Paragraph 11 reads thus:

"11. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is "nec vi, nec clam, nec precario", that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See S.M. Karim v. Bibi Sakina [AIR 1964 SC 1254] , Parsinni v. Sukhi [(1993) 4 SCC 375] and D.N. Venkatarayappa v. State of Karnataka [(1997) 7 SCC 567] .) Physical fact of exclusive



possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. [Mahesh Chand harma (Dr.) v. Raj Kumari Sharma [(1996) 8 SCC 128.]]"
(underline supplied)

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.*

13. *It is a settled law that by pleading adverse possession, a 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."*

14. It is thus a matter of settled law that the petitioner/plaintiff had to *prima facie* show that his possession is hostile and continuous. In the present case, it could not be disputed that the property which was



initially owned by Harbans Singh, father of the plaintiff and defendants No.1 to 5, was inherited by the plaintiff, defendants no.1 to 5 as well as the widow of the said Harbans Singh and after the death of the said widow, even her share was inherited by defendants no.1 to 5 and the plaintiff, thus, all of them became co-sharers in the property in question. No law has been cited before this Court to show that a co-sharer can seek declaration against other co-sharers on the plea of having become owner by virtue of adverse possession. Moreover, a perusal of the plaint would show that there is no such specific incident highlighted to show as to when the alleged possession of the plaintiff became hostile. It is a matter of settled law that mere possession, howsoever long it may be, does not prima facie lead to the conclusion that the said possession was adverse so as to constitute the right of ownership, more so, against the co-sharers.

15. In the present case, there is nothing on record to even show that the plaintiff is in exclusive possession of the suit property. Learned counsel for the petitioner has submitted that the petitioner is in possession of the *nehri girdawari* to show his continuous possession but has fairly submitted that as far as the khasra girdwaris are concerned, the same were in the name of his father Harbans Singh till the time the mutations were entered in the year 2022. The factum as to whether the plaintiff is in exclusive possession or not is also to be considered during the course of trial as it is the plea of the contesting defendants in the written statement that the plaintiff is not in exclusive possession of the property in question. Moreover, in the partition proceedings, which has been instituted by



CR-2631-2024

-13-

defendant No.6, Sanad Takseem has already been issued which is the final step and only possession is to be given according to the Sanad Takseem to all the co-sharers. Although it is the case of petitioner that he has filed a revision before the Commissioner challenging the said Sanad Takseem, but on a pointed query raised by this Court, it has been fairly submitted that there is no stay in the said proceedings. In the said circumstances, the arguments raised on behalf of respondents No.4 to 6 to the effect that the suit had been filed subsequent to the partition case, only to delay the partition proceedings cannot be said to be baseless.

16. Keeping in view the above, this Court is of the opinion that the impugned orders dated 04.12.2023 and 16.04.2024 are in accordance with law and deserve to be upheld and accordingly, the impugned orders are upheld and the present revision petition being meritless, deserves to be dismissed and is dismissed.

17. It is made clear that the observations made in the present order are only for the purpose of deciding the revision petition which arises from the proceedings under Order 39 Rule 1 and 2 CPC and the observations made in the present order should not be construed as an expression on the merits of the main suit and the trial Court would decide the main suit independently, in accordance with law.

April 28, 2026
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes