



109 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-500-2008 (O&M)
Reserved on 09.02.2026
Pronounced on : 06.05.2026
Uploaded on : 06.05.2026

Whether only operative part of the judgment is pronounced? No

Whether full judgment is pronounced? Yes

Mukand Kaur & ors.Appellants

Versus

Smt. Middo & ors.Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Mukul Goyal, Advocate
for the appellants.

Mr. Kanwal Goyal, Advocate
for respondents No.21 & 22.

None for other respondents.

PANKAJ JAIN, J.

1 Plaintiffs are in second appeal. For convenience, parties hereinafter are referred to by their original position in the suit, i.e. the appellants as plaintiffs No.6 to 16 and respondents as defendants. Appellants No.10 & 11 are LR's of plaintiff No.16.

2 Plaintiffs filed a suit seeking decree of declaration to the effect that they have become owners of the suit property as detailed out in the head note of the plaint being in continuous long and hostile possession. Plaintiffs



further sought decree of permanent injunction seeking restrain against the defendants from interfering in their peaceful possession.

3 As per plaintiffs, they are co-sharers in the suit land measuring 359 kanal 3 marlas situated within revenue estate of village Kotshamir-II Tehsil and District Bathinda along with defendants No.1 to 25. Plaintiffs claim that defendants No.1 to 25 never came in possession of any part of the property. The suit property remained in exclusive possession of the plaintiffs since the times of their forefathers. Their possession is open and hostile and without payment of any rent which is in the knowledge of defendants. Their possession being adverse to the rights of defendants, they have perfected their possession into title by prescription.

4 Suit was contested by the defendants. Defendants asserted their rights as co-owners in the suit land and claimed to be in possession in their capacity as co-sharers and prayed for dismissal of the suit.

5 Suit filed by the plaintiffs was put to trial by the Court of First Instance framing following issues :-

- “1. Whether the plaintiff is entitled to declaration as prayed for? OPP*
- 2. Whether the plaintiff is entitled to permanent injunction as prayed for? OPP*
- 3. Whether the plaintiff has no locus standi or cause of action? OPD*
- 4. Whether the suit is bad for non-joinder of necessary parties? OPD*
- 5. Whether the suit is false, frivolous and vexatious to the knowledge of the plaintiff? OPD*
- 6. Whether the suit is barred by principle of estoppel? OPD*
- 7. Whether the suit is not maintainable in the present form? OPD*
- 8. Relief.”*



6 Answering issues No.1, 2 & 4, the Court of First Instance after analysing evidence on record held that even as per the case of the plaintiffs, defendants No.11 to 15 along with other co-sharers filed partition application. The status of parties being co-sharers and the plaintiffs having failed to plead and prove the date on which their possession became hostile. Thus, issues No.1, 2 & 4 stand decided against the plaintiffs. Suit filed by the plaintiffs was accordingly dismissed.

7 Unsuccessful plaintiffs filed appeal. The Lower Appellate Court affirmed the findings recorded by the Court of First Instance, holding that Paramjit Kaur one of the co-sharers having not been impleaded in the present suit, the Lower Appellate Court dismissed the appeal filed by the plaintiffs.

8 Learned counsel for the plaintiffs has assailed the findings recorded by the Courts below. It has been contended that it stands proved on record that the plaintiffs are in exclusive possession over the suit property. Defendants even though recorded as co-owners, failed to prove that they ever came in possession of the suit property. Thus, the Courts below erred in dismissing the suit filed by the plaintiffs.

9 *Per contra* learned counsel for respondents No.21 & 22 submits that the property in question is joint unpartitioned property. There is no evidence to prove that the possession of the plaintiffs is to the exclusion of the defendants. There is no specific date pleaded on which the possession of the plaintiffs became hostile. *Qua* plaintiffs No.1 to 5 appeal was ordered to be dismissed. No application was filed seeking restoration. Thus, at least *qua* plaintiffs No.1 to 5 the impugned judgment and decree has attained finality.



Reliance is being placed upon judgments passed in *Brijesh Kumar and anr Vs Shardabai (D) by Lrs and ors (2019) 9 SCC 369*, *Dagadabai (D) by LRs Vs Abbas Gulab (2017) 13 SCC 705*, *Darshan Singh Vs Gujjar Singh (2002) 2 SCC 62*, *Govindammal Vs R. Perumal Chettiar and ors (2006) 11 SCC 600*, *Yasin Khan and ors Vs Gaiasuddin and ors 2015(2) RCR (Civil) 359 (P&H)*, *Gian Singh and ors Vs Atma Singh and others- 2007(3) PLR 205-(P&H)*, *Kehar Singh Vs Ishwar 1985 PLR 530 (P&H)* and *Ram Chander Vs Bhim Singh & Others 2008(3) PLR 747 (FB) (P&H)*.

10 Apart from the merits of the present case it needs to be noticed that earlier the present appeal was dismissed by this Court vide order dated 12.03.2014, observing as under :-

“It is not disputed by learned counsel for the parties that the suit was filed by the plaintiffs claiming the ownership on the basis of adverse possession. It is settled by Hon'ble Supreme Court in the case of. Gurudwara Sahib V/s. Gram Panchayat Village Sirthala and another 2013(4) RCR (Civil) 703 that the plea of adverse possession can be used as a shield and not as a sword, meaning thereby a person in adverse possession can only defend his possession by raising the plea that after expiry of 12 years, when his possession is open, hostile and continuous, the plaintiff cannot claim ownership. In view of law settled by the Supreme Court, I do not find any merit in the present appeals.

Dismissed.”

11 The plaintiffs impugned the same before Supreme Court in appeal. The appeal was allowed by the Supreme Court vide order dated 21.11.2022 observing as under :-

“Delay in filing applications for substitution is condoned. Applications for substitution are allowed.



Leave granted.

The instant appeal is filed against the judgment dated 12.03.2014 passed in RSA No. 500/2008 (O&M) by the Punjab and Haryana High Court at Chandigarh.

Having heard learned counsel for the appellants as also learned senior counsel for the respondents, we note that the High Court while disposing of the second appeal has merely relied on a judgment of this Court in the case of Gurudwara Sahib Vs. Gram Panchayat Village Sirthala & Anr. reported in 2013(4) RCR (Civil) 703 to hold a suit for declaration of title by adverse possession cannot be filed.

When the appeal is taken up for consideration, it is noted that Hon'ble Three Judge Bench of this Court in a subsequent decision in the case of Ravinder Kaur Grewal & Ors. Vs. Manjit Kaur & ors. reported in (2019) 8 SCC 729 has specifically overruled the judgment which was relied upon by the High Court and has concluded that the contention with regard to adverse possession can be used as a sword in an appropriate case and not merely as a shield, thereby holding that suit for declaration can be filed. In that view, the High Court, in the second appeal will have to examine the matter on other aspects as well.

In that view of the matter, without expressing any opinion on the merits in the appeal to be considered before the High Court on all aspects of the matter, we feel it appropriate to set aside the judgment dated 12.03.2014 and restore RSA No. 500/2008 to the file of the High Court.

All contentions on merits are left open including the prayer for interim relief, if any.

The appeal is accordingly, disposed of.

Considering that the appeal now restored to the High court is of the year 2008, we request the High Court to consider and dispose of the appeal as expeditiously as possible.”



12 I have heard learned counsel for the parties and have carefully gone through records of the case.

13 The admitted case of the plaintiffs is that defendants were co-sharers along with them in the joint holding. Plaintiffs assert their possession to be adverse against their co-sharers and thus claim to have become owners. Law on the issue of co-sharer claiming adverse possession against co-sharer is no more *res integra*. Supreme Court in the case of ***Darshan Singh's case (supra)*** observed as under :-

“10. In our view, the correct legal position is that possession of a property belonging to several co-sharers by one co-sharer shall be deemed that he possess the property on behalf of the other co-sharers unless there has been a clear ouster by denying the title of other co-sharers and mutation in the revenue record in the name of one co-sharer would not amount to ouster unless there is a clear declaration that title of the other co-sharers was denied.”

14 Same view was reiterated in ***Govindammal's case (supra)*** observing as under :-

*“12. In the case of **Nirmal Chandra Das and Ors. V. Mohitosh Das & Ors. reported in AIR 1936 Calcutta 106** their Lordships observed that in order to succeed on the ground of ouster, the person setting up ouster is bound to show that he did set up an adverse or independent title during the period which was beyond the statutory period of 12 years. Their Lordships further observed that there can be no adverse possession by one co-sharer as against others until there is an ouster or exclusion; and the possession of a co-sharer becomes adverse to the other co-sharer from the moment there is ouster.”*



15 Full Bench of this Court in ***Bhartu vs. Ram Swarup, reported as 1981 PLJ 204***, while culling out the legal proposition with respect to *inter se* rights between co-sharers, held that each co-sharer would be deemed to be a trustee on behalf of other the co-sharers. Possession of one of the co-sharers would be deemed to be possession on behalf of all. Full Bench approved the following principles laid down by Division Bench in ***Sant Ram Nagina Ram vs. Daya Ram Nagina Ram, AIR 1961 Ph. 528*** :-

“1) A co-owner has an interest in the whole property and also in every parcel of it.

(2) Possession of the joint property by one co-owner is in the eye of law, possession of all even if all but one are actually out of possession.

(3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.

(4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession, of a co-owner must not only be exclusive but also hostile to the knowledge of the other, as, when a co-owner openly asserts his own title and denies that of the other.

(5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.

(6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.

(7) Where a co-owner is in possession of separate parcels under an arrangement consented to by the other co-owners, it is not open to any one to disturb the arrangement without the consent of others except by filing a suit for partition.”



16 A Co-ordinate Bench of this Court in **Gian Singh's case (supra)** held as under :-

“7. xxx xxx xxx

The possession of one co-sharer is possession of all the co-sharers. In the case of co-sharers, mere length of possession of one co-sharer would not give any title to the co-sharer in possession. It was found that there is no evidence of the fact that the possession is adverse to the knowledge of other co-sharers. Once such is the finding, the present suit for possession based on title is governed by Article 65 of the Limitation Act, 1963. As per the said Article, it is for the defendants to prove that their possession became adverse to the plaintiffs for the last 12 years.”

17 In view of above, this Court finds that possession of a co-sharer shall be deemed to be possession on behalf of all co-sharers. In order to claim adverse possession, a co-sharer in possession is required to plead and prove his possession to the exclusion of other co-sharers.

18 This Court had an occasion to deal with the issue of adverse possession in RSA No.1897 of 1999, titled **Harbhajan Singh (since deceased) and others vs. Manmohan Singh**, decided on 22.01.2025. The series of precedents was analysed to observe as under :-

“8. *Trite it is that the issue related to adverse possession is a blend of law and fact. In terms of Section 41 of the Punjab Courts Act as interpreted by five Judges Bench in the case of Pankajakshi vs. Chandrika (2016) 6 SCC 157, it is not necessary to frame question(s) of law. Perversity in the findings recorded by the impugned judgment amounts to question of law and falls within the scope of second appeal. As per the settled proposition of law, possession howsoever long it may be, cannot be held to be adverse. As per the classical requirement, a possession to be an adverse possession needs to be nec vi, nec clam, nec precario i.e. the possession must be adequate in continuity, in publicity and adequate in extent to show that it is a*



possession adverse to the competitor. Possession itself does not amount to ownership. While ownership is de jure recognition of a claim to property, possession is de facto counter part thereof. As per classic law, possession implies:-

(i) Corpus i.e. physical control or actual possession;

(ii) Animus i.e. the desire to possess.

Both these elements are necessary to constitute possession.

9. *There is no statutory definition of adverse possession. In law, it is understood to be possession inconsistent with the title of the true owner. It implies the possession which is:-*

(a) commenced in wrong; and

(b) maintained against right.

10. *Supreme Court in **S.M. Karim vs. Bibi Sakina, 1964 AIR Supreme Court 1254**, while laying down the requirements of adverse possession, observed as under:-*

“xx xx

Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. There is no evidence here when possession became adverse, if it at all did, and a mere suggestion in the relief clause that there was an uninterrupted possession for "several 12 years" or that the plaintiff had acquired "an absolute title" was not enough to raise such a plea. Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea.”

11. *Same was reiterated in **D.N. Venkatarayappa and another vs. State of Karnataka and others, 1997 AIR Supreme Court 2930**, observing as under:-*



“xx xx

Further, this Court, in the case of Danappa Revappa Kolli v. Gurupadappa Kallappa Pattana Shetti, ILR (1990) Karnataka 610, while referring to the decision of the Supreme Court in Kshitish Chandra's case (supra), relied upon by Sri Narayana Rao in support of the plea of adverse possession, has observed that apart from that actual and continuous possession which are among other ingredients of adverse possession, there should be necessary animus on the part of the person who intends to perfect this title by adverse possession. The observations made in the said decision reads thus:

“5. ... Apart from actual and continuous possession which are among other ingredients of adverse possession, there should be necessary animus on the part of the person who intends to perfect his title by adverse possession. A person who under the bona fide belief thinks that the property belongs to him and as such he has been in possession, such possession cannot at all the adverse possession because it lack necessary animus for perfecting title by adverse possession.”

Therefore, it is clear that one of the important ingredients to claim adverse possession is that the person who claims adverse possession must have set up title hostile to the title of the true owner.”

12. *Following the same view, Supreme Court in **Karnataka Board of Wakf vs. Govt. of India and others (2004) 10 SCC 779** held the same thread of reasoning to observe that:-*



“11. In the eye of 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 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 true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. [Mahesh Chand Sharma (Dr.) v. Raj Kumari Sharma [(1996) 8 SCC 128]”.

13. Commenting upon the requisite pleadings and necessity to establish the facts and absence of equities in the case of adverse possession, Supreme Court in **Dr. Mahesh Chand Sharma vs. Raj Kumari Sharma, 1996 AIR Supreme Court 859**, observed as under:-

“xx xx x

We may emphasise that 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 the facts necessary to establish his adverse possession. For all the above reasons, the plea of limitation put forward by the appellant, or by Defendant Nos.2 to 5 as the case may be is rejected.”

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 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.”

19 In the present case, the plaintiffs who are co-sharers with the defendants, have failed to plead and prove as to when their possession became hostile and averse to the rights of defendants. There is no evidence to prove that their possession was to the exclusion of defendants.

20 In these circumstances, this Court finds no reason to hold that the plaintiffs have perfected their possession into title by way of prescription.

21 Finding no merits in the present appeal, the same is ordered to be dismissed.

22 Pending miscellaneous application, if any, also stands disposed off.

06.05.2026
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No