

2026:PHHC:069054



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

RSA-3202-2025 (O&M)  
Date of Decision: 04.05.2026

Jaisa (now deceased) through his LRs and another ...Appellants

Versus

Roop Chand (since deceased) through his LRs ...Respondents

**CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present: Mr. Rakesh Nagpal, Advocate,  
for the appellants.

**VIKRAM AGGARWAL, J (Oral)**

This is defendants' appeal against the judgment and decree dated 17.05.2025, passed by the Court of Additional District Judge, Fatehabad, dismissing the appeal against the judgment and decree dated 29.09.2018 passed by the Court of Civil Judge (Junior Division), Tohana, vide which the suit filed by the plaintiffs, was decreed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. The plaintiff (Roop Chand) filed a suit for possession in respect of a *gair mumkin* plot bearing Khasra No.460 (0-18), Khewat No.79, Khatauni No.257 as per jamabandi for the year 2012-13 (fully described in the plaint) situated in the revenue

estate of Sidhani (hereinafter referred to as 'the suit property'), which, the defendants were stated to have encroached upon by constructing a house.

3.1 It was claimed that the plaintiff was the owner of the suit property. About three years back, he had to go out of station to get himself treated and taking undue advantage of the said fact, the defendants had illegally encroached upon the suit property. They had raised construction upon the same as well, whereas, they had no right to do so. It was also claimed that the plaintiff had got the suit property demarcated on 10.06.2016 and the demarcation report clearly mentioned that the defendants had encroached upon the suit property. It was, thus, claimed that the plaintiff was entitled to take possession of the suit property back from the defendants.

4. The defendants contested the suit by filing a written statement taking various preliminary objections regarding maintainability, cause of action, *locus-standi*, estoppel, mis-joinder and non-joinder of necessary parties, the plaintiff having not approached the Court with clean hands and concealing material facts etc.

4.1 On merits, it was asserted that the defendants had become owners of the suit property on the basis of adverse possession. It was further claimed that they had come in possession of the suit property on 20.05.1982 and started tethering their cattle, placing dung-cakes and woods and sticks on the suit property. It was further asserted that initially on 20.07.1984, the defendants had constructed a *kacha* house on

the suit property and subsequently a *pucca* house was constructed thereon in the year 1997. It was further the case of the defendants that since then, they had been living in the said house peacefully and without any interruption.

4.2 Still further, it was averred that the defendants had got installed electricity connections on the suit property on 23.04.1985 and 10.01.1994. It was further asserted that the defendants had been owners in possession of the suit property since 20.05.1982/20.07.1984 and that the entries in the revenue record in the name of the plaintiff as owner in possession, were wrong, fictitious and against the factual position on the spot.

5. From the pleadings of the parties, the following issues were framed:-

1. **Whether the plaintiff is entitled to relief of possession as prayed?OPP**
- 1(a). **Whether the defendants are owners in the possession of the suit land as mentioned in the head note of the plaint by way of adverse possession?OPD**
2. **Whether the plaintiff has not come to the Court with clean hands and has suppressed true and material facts from the Court?OPD**
3. **Whether the plaintiff has no locus-standi and cause of action to file the present suit?OPD**
4. **Whether the suit of the plaintiff is not maintainable in the present form?OPD**
5. **Whether the suit of the plaintiff is bad for non-joinder and mis-joinder of necessary parties?OPD**
6. **Whether the suit of the plaintiff is bad and vague and liable to be dismissed with special costs under Section 35-A CPC?OPD**

**7. Whether the suit of the plaintiff is liable to be dismissed for want of proper Court fee?OPD**

**8. Relief.**

6. Parties led their respective evidence.

7. The trial Court, vide judgment and decree dated 29.09.2018, decreed the suit filed by the plaintiff. The appeal filed by the defendants against the said decision was dismissed by the first Appellate Court vide judgment and decree dated 17.05.2025. Aggrieved by the same, the defendants have preferred the instant appeal.

8. I have heard learned counsel for the appellants and have also perused the record.

9. Learned counsel appearing for the appellants argues that both Courts failed to take into consideration that the defendants had been in possession of the suit property since 20.05.1982, which was in the due knowledge of the plaintiff and that the plaintiff had neither tried to take possession of the suit property from the defendants nor had ever interfered with the same. It is further argued that cogent and convincing evidence was led on record to prove that the defendants had earlier obtained electricity connection on 23.04.1985 in respect of *kacha* house constructed over the suit property and subsequently a new connection was obtained on 10.01.1994, after constructing a *pucca* house on the suit property. It is argued that the said vital evidence was totally ignored by both Courts.

9.1 Learned counsel for the appellants further argues that the defendants had been paying '*chulla tax*' (house tax) and had led documentary evidence in the form of Ex.DW-4/A and Ex.DW-4/B (receipts showing payment of the said tax) to establish that they had been in continuous possession of the suit property and had even obtained ration cards Ex.DA and Ex.DB. It is argued that the said evidence was totally discarded by both Courts, while decreeing the suit filed by the plaintiff. It is also argued that having been in possession of the suit property for more than 12 years, both Courts wrongly declined the plea of adverse possession set up by the defendants.

10. I have considered the submissions made by learned counsel for the appellants, but find the same to be devoid of merit.

11. 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 cases 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.

12. Both Courts returned a finding that on the one hand, the defendants had denied the ownership of the plaintiff over the suit property, but on the other hand, they had raised the plea of adverse possession. It was held that the plaintiff had been able to prove on record his ownership on the basis of the revenue record. It was, thus, found that the defendants could not claim adverse possession over the suit property, once they had denied the ownership of the plaintiff.

13. It was also found that though the defendants had placed on record the receipts in respect of the payment of *chulla tax* (house tax) and ration cards and obtaining of the electricity connection(s), yet they failed to prove that the said documents pertained to the suit property inasmuch as no evidence could be led that the same had been issued/obtained in respect of the suit property.

14. In respect of the reliance of the defendants on the testimony of DW4-Chajju Ram and DW5-Santa Singh, it was observed that both the said witnesses had deposed that there was another house (i.e. House No.432) of the defendants within the '*lal dora*' and, thus, the possibility of the defendants having adduced the electricity bills and *chulla tax* receipts in respect of the said house, could not be ruled out. It was further found that mere long possession of the defendants over the suit property could not be considered a ground that they had been in adverse possession of the suit property. The relevant part of the judgment of the first Appellate Court reads as under:-

“28. Even if for the sake of arguments, it is presumed that possession of the defendants over the suit property

was for period more than 12 years, then even defendants have failed to prove when their possession turned hostile towards true owner. As per own case of plaintiff, they acquired the knowledge that defendants have illegally occupied the suit property upon demarcation which was conducted on 10.06.2016. Same indicates that possession of the defendants was not open and was not in the knowledge of plaintiffs and thus could not be termed as hostile. Hence, plea of adverse possession of the defendants is not tenable.

29. Moreover, in the written-statement, the defendants have denied the title of the plaintiff over the suit property. Thus there is no question of acquisition of title by way of adverse possession. The said view of the Court finds affirmation in law laid down by the Hon'ble Supreme Court in case titled **City Municipal Council Versus Gurappa 2016 (1) CCC 175 SC**. Thus, the plaintiff, being owner of the suit property is certainly entitled to claim possession of the suit property and plea of adverse possession of the defendants fail for want of evidence. Furthermore, plea raised by the appellant that suit filed by the plaintiff was hopelessly time-barred is concerned, there is no period of limitation in filing suit on the basis of title. Moreover, as per case of the plaintiff, the property was illegally acquired by the defendants three years prior to filing the suit. There is no evidence on the case file to contradict said plea. Hence suit filed is within period of limitation. So far question arises that issue regarding adverse possession was not framed by the learned trial Court is concerned, again no prejudice is caused to the interest of defendants by the said omission. The entire evidence and arguments have been advanced by the learned counsel for the defendants to prove the plea of adverse possession. Thus, his said pleas are turned down."

15. This Court is of the considered opinion that the findings recorded by both Courts are based on evidence on record. Once, the defence set up by the defendants did not find

any favour with both Courts, the real owner of the suit property is entitled to the possession of the same. Both Courts rightly recorded that there is no period of limitation for filing a suit on the basis of title. It was the categoric plea of the plaintiff that the defendants had encroached upon the suit property three years prior to the filing of the suit. The said plea also could not be controverted by the defendants in any manner.

16. In view of the above, the concurrent findings of facts recorded by both Courts cannot be said to be suffering from any illegality warranting interference by this Court in the instant Regular Second Appeal. It could not be shown that any evidence has been misread or taken into consideration.

17. For the reasons aforementioned, I do not find any merit in the present appeal and the same is, accordingly, dismissed.

18. Pending application(s), if any, also stands disposed of.

**(VIKRAM AGGARWAL)**  
**JUDGE**

04.05.2026

ds

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