

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****143****RSA-3302-2025 (O&M)****Date of decision: 06.04.2026****Puran Mal****...Appellant(s)****Vs.****Shri Gaushalla Regd. Mahendergarh and another ...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Vaibhav Narang, Advocate
for the appellant.

NIDHI GUPTA, J.

Present Second Appeal has been filed by the defendant No.1 against the concurrent judgments and decrees of the learned District Courts; whereby suit filed by the plaintiff/respondent No.1 for possession, had been decreed by both the District Courts.

2. It was the pleaded case of the plaintiff that as per Jamabandi for the year 2009-2010, it was owner in possession of the suit land as described in the plaint. It was alleged that after demarcation was conducted on 03.02.2017 by order of AC IInd Grade, Charkhi Dadri, defendants were found to have encroached upon suit land and were found to be in illegal possession thereof. Accordingly, on 22.03.2017, plaintiff had served legal notice upon the defendants. However, to no avail. Hence, present suit for possession was filed on 04.05.2017.

3. Upon appraisal of the pleadings and the evidence led by the parties, the learned Additional Civil Judge (Senior Division), Charkhi Dadri



had decreed the suit of the plaintiff with costs vide judgment and decree dated 16.08.2023 in the following terms: -

“20. Thus, in light of above discussion and keeping in view the findings of this Court on aforesaid issues, present suit is hereby decreed with costs to the effect that the plaintiff is legally entitled to recover possession of the suit property from defendant No. 1 and 2, and defendant No. 1 and 2 are legally bound to deliver its vacant possession to it. Decree sheet be drawn accordingly. File be consigned to the record room after due compliance.”

4. The Civil Appeal filed by the appellant/defendant No.1 and defendant No.2 was dismissed by the learned Additional District Judge, Charkhi Dadri vide judgment and decree dated 28.08.2025. Hence, the present second appeal by defendant No.1.

5. It is *inter alia* submitted by learned counsel for the appellant that learned Courts below have failed to appreciate that in resisting the suit, appellant had taken plea of adverse possession. It is submitted that it is admitted position on record that the defendants have long standing possession of the suit land. Defendant had also succeeded in proving that possession of the suit land was hostile and was in the knowledge of the plaintiff. Thus, defendants had succeeded in proving their adverse possession of the suit land. Yet, defendants had been non-suited on spurious grounds.

6. It is further submitted by learned counsel for the appellant that both the Courts below have erred in interpretation of plea of adverse



possession. Both the Courts below have not considered the settled principles of law on adverse possession and has erred in passing the impugned judgments. It is submitted that the unobjected possession of appellant over the suit property is for 40 years possession rendering the claim of the plaintiff untenable. The Hon'ble Supreme Court of India in case titled as **Ravinder Kaur Grewal Vs. Manjit Kaur (2019) 8 SCC 729** has clarified that adverse possession is a hostile claim that ripens into independent title after 12 years under article 65 of the limitation Act, 1963.

7. Further it is submitted that it is categoric pleading in the written statement that the appellant has claimed exclusive, open possession for 40 years far exceeding the threshold of 12 years for private property. However, both the Ld. Courts below have failed to appreciate the law of adverse possession before returning the findings. Thus, impugned judgments are result of non application of settled principles of law and has been passed in a hasty manner and are liable to be set aside.

8. Ld. counsel for the appellant further submits that both the Courts below have not considered relevant evidence tendered by appellant which includes the statements of the residents of the village Norangabass Rajputan. One of such residents namely Partap Singh aged 65 years has deposed that appellant is in possession of land in dispute from last 40 years continuously and has become owner by way of adverse possession.



9. Similarly, one Shri Kanwarpal the former Sarpanch of the village has also appeared as DW1 and has submitted that on the same lines. Similarly appellant Puran Mal himself has appeared as DW3 and has categorically stated that he is in possession from last 40 years and also got installed the electricity meters on the name of his wife Suman Devi and also has ration card and Voter card and also paid Chulla Tax of this house.

10. Similarly, One Kanwarpal Co-villager aged 58 years has also examined in the Court as DW5 and categorically deposed that appellant has become the owner of the land in dispute by way of adverse possession and he has been watching them all of his life.

11. Thus, both the Id. Courts have lightly brushed aside the depositions of witnesses without reading the contents of the same and not appreciating the same. Thus, the impugned order is liable to be set aside.

12. It is submitted that learned District Courts have also not considered the documentary evidence in the form of electricity bill issued by DHBVNL and ration card et cetera which had been adduced by the appellant proving their possession over the suit property. It is submitted that it is settled law that where the possession is visible and uninterrupted for decades, the learned District Courts must assume knowledge to the true owner or presume abandonment. Thus, the impugned judgments have been passed by ignoring the settled principles of law and, therefore, are liable to be set aside.



13. Learned counsel for the appellant further submits that the respondent no. 1/plaintiff has miserably failed to prove his case by leading cogent and convincing evidence. The plaintiff has not adduced any evidence to show that the suit property had ever remained in his exclusive possession and inference can easily be drawn that the appellant/defendant no. 1 is having the possession over the suit property for the last more than 40 years i.e. since the time of their ancestors and they have become the owners by way of adverse possession as they are using the suit property for the last more than 40 years and the respondent/plaintiff has never raised any objections at any point of time. The entries in the revenue record, which are illegal and adverse to the rights of the appellant as well as at the spot are rebuttable and no reliance can be placed upon the illegal entries in the revenue record still showing the ownership of the plaintiff over the land in dispute and cannot be made basis for decreeing the suit. The Ld. Court did not consider the documentary evidence consisting of ration card, electricity bill, site plan of the houses, which established the possession without any interference from any quarter of the appellant/defendant no. 1 for the last 40 years and they have acquired the title for a statutory period of 12 years. The Ld. Courts below did not touch this aspect while reaching to the conclusion adverse to the appellant/defendant no. 1.

14. It is further submitted by learned counsel for the appellant that both the Courts below have not considered the alleged demarcation report which is doubtful. The alleged demarcation report does not depict



the age of construction of the houses on the alleged encroachment of land. The alleged demarcation was not carried out in the presence of the appellant/defendant no. 1 and the respondent/plaintiff has procured the false demarcation report to create evidence by using the same in the present suit. Even at the time of alleged demarcation the Kanungo did not have with him the revenue record namely jamabandi, field book, masavi, mutations with tatims and aks Latha (Map) which has to be the foundation of the measurement and demarcation according to the Punjab Land Revenue Act and Rules framed thereunder and instructions given in the Punjab & Haryana High Court Rules and order. No three pucca point have been fixed by Kanungo and even in the demarcation report, no difference has been mentioned in the point fixed. The alleged demarcation report cannot be given any credence and also cannot be made basis of decreeing the suit as the said report is wrong, illegal, null and void, against actual and factual position and is against law and procedure and liable to be ignored.

15. It is further submitted by learned counsel for the appellant that both the Ld. Courts below have not considered that from an overall consideration of the evidence of the appellant/defendant no. 1 duly coupled with the documents, which remained unchallenged and there is no reason to disbelieve that the appellant/defendant no. 1 is in unlawful possession of the suit property and the respondent/plaintiff never raised any objection regarding use and enjoyment of the same for the last 40 years when the appellant came in possession of the suit property and



raising construction thereon and obtaining the electricity connection, ration card and voter list etc. prepared for their identification and utilizing the suit property for their residence. Further proves the continuous possession of the defendants over the suit property for the last 40 years till date and as such defendants acquire the adverse possession of the suit property, which is quite peaceful, regular, continuous and without any interference for the last more than 12 years and hostile to all concern, which creates estoppel on the part of the plaintiff to claim the possession of the suit property. No such prudent person, who is coming physical possession for the last 40 years since the time of their father cannot disclose exact date and time of entering into possession and the Ld. Courts below ought to have held that the respondent/plaintiff is not entitled for recovery of possession and that the suit is hopelessly time barred and not maintainable.

16. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of District Courts be set aside.

17. No other argument is raised on behalf of learned counsel for the appellant. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions advanced on behalf of appellant.

18. It needs no agitating that mere long possession over the suit property, would not result in ownership of the occupants/appellant/defendants over the suit property. Needless to say, just long possession of defendants No.1 and 2 over the suit property, is not sufficient to establish their plea of adverse possession; unless the said



possession is proved to be open, hostile and to the knowledge of the true owner. In the present case, plaintiff has proved his exclusive ownership over the suit property by way of Jamabandi for the year 2009-2010 Ex.P7 which clearly reflects title of the plaintiff over the suit property. In fact, plea of adverse possession taken by the appellant is implied admission of the appellant regarding the ownership of the plaintiff over the suit land.

19. Further in order to prove his plea of adverse possession, appellant was also required to prove that his said adverse possession was open, hostile and to the knowledge of the plaintiff. In the present case, defendants have nowhere taken a plea that possession of the defendants over the suit property was within the knowledge of the plaintiff for the last 40 years. In fact, defendant No.1 Puran Mal while appearing as DW3 has categorically admitted in cross-examination that he does not know who the owner of suit property is. DW3 has also admitted that he cannot tell whether plaintiff is in possession of suit property or not. In my view the aforesaid admissions of the appellant are sufficient to prove that plaintiff was not in the knowledge of the alleged possession of the defendants over the suit property for the past 40 years.

20. Furthermore, it is admitted fact on record that plaintiff is the owner of the suit property. In fact, defendants have nowhere claimed themselves to be the owners of the suit property and have only stated that they are in adverse possession of the suit property. However, defendants have abjectly failed to prove their assertion of adverse possession. No specific date has been given by the defendants as to when



and in what manner did they, or their predecessor-in-interest, come into possession over the suit property. Moreover, defendants have also not pleaded that their alleged possession over the suit property was undisturbed. In fact, it is the plaintiff, who had pleaded that they came to know of the illegal occupation of the defendants over the suit property on the basis of demarcation. Defendants have also failed to tell as to on which date possession of the defendants became hostile to the plaintiff.

21. Learned counsel for the appellant is unable to controvert or dispute the above said facts and findings.

22. Even otherwise, it is undisputed position in law that this Court in Second Appeal has limited jurisdiction to interfere in the findings of fact rendered by the Courts below; as held by the Hon'ble Supreme Court in **M/s. Shivali Enterprises v. Godawari (Deceased) (SC) : Law Finder Doc ID # 2034559**, as under: -

*"14. This Court, in the case of **Randhir Kaur v. Prithvi Pal Singh and Others (2019) 17 SCC 71**, after considering the scope of interference under the old section 100 of the Civil Procedure Code, 1908 (for short "CPC") and Section 41 of the Punjab Act, has observed thus:*

"15. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact."

15. *It could thus be seen that this Court has held that, even when a court exercises jurisdiction under Section 41 of the Punjab Act, it cannot interfere with the findings of fact in second appeal on the ground that the said findings are erroneous, howsoever gross or inexcusable the error may seem to be. It has been held that the findings of fact would also include the findings on the basis of documentary evidence. The jurisdiction under Section 41 of the Punjab Act would be available only when there is a substantial error or defect in the procedure provided by the CPC or by any other law for the time being in force.”*

23. In the present case, appellant has been unable to show any procedural or other legal error.

24. In view of the above, no ground is made out to interfere in the impugned judgment and decrees of the learned District Courts. Hence, present Second Appeal stands **dismissed**.

25. Pending applications, if any, stand disposed of.

06.04.2026
Divyanshi

(NIDHI GUPTA)
JUDGE

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