



RSA-2288-1992 (O&M)

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

**RSA-2288-1992 (O&M)
Reserved on: 20.04.2026
Pronounced on: 06.07.2026
Uploaded on: 06.07.2026**

HANS RAJ AND OTHERS**-APPELLANTS****V/S****KANWAR VIJAY SINGH (DECEASED) THROUGH HIS LEGAL
REPRESENTATIVES****-RESPONDENT****CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Ashish Gupta, Advocate
for the appellants.

Mr. Ajay Jain, Advocate
for the respondent (i) to (iii).

Mr. Kshitij Sharma, Sr. Advocate, with
Mr. Shobhit Sharma, Advocate
for the respondent (iv) to (vi)

KULDEEP TIWARI, J.

1. The instant Regular Second Appeal has been preferred by the appellants (defendants before the trial Court) assailing the concurrent judgments and decrees dated 05.06.1989 and 01.09.1992, rendered by the learned trial Court and the learned first appellate Court, respectively, whereby the suit instituted by the respondent (plaintiff before the trial Court) was decreed and the appeal preferred by the appellants was dismissed. For the sake of convenience, the parties to the present *lis* shall hereinafter be referred to according to their status before the trial Court.

**FACTUAL MATRIX**

2. The genesis of the present appeal lies in a suit instituted by the plaintiff seeking a decree of permanent injunction restraining the defendants from raising any permanent construction or from converting the *kacha* construction under their tenancy into a *pucca* one on the site described in the plaint. The plaintiff further sought a declaration that any *pucca* construction raised by the defendants over the site of the old *kacha* structure without his permission would not entitle them to claim any compensation therefor. In addition thereto, the plaintiff also sought recovery of arrears of rent amounting to ₹116.67/-.

3. The plaintiff founded his claim primarily upon the judgment and decree dated 09.06.1952 passed in Civil Suit No.387 of 1951, instituted for the ejectment of the predecessors-in-interest of the defendants, namely, Sawai, Nathu and Daya Ram. It was pleaded that the plaintiff's father had inducted the aforesaid predecessors-in-interest as tenants over the suit property at an annual rent of ₹40/- under rent deeds dated 19.04.1935, 19.04.1935, 15.02.1943, 18.01.1945 and 22.03.1946, which were exhibited as Ex.P1 to Ex.P5, respectively. It was further averred that, in the year 1951, the plaintiff instituted Civil Suit No.387 of 1951 seeking their ejectment, which culminated in the judgment and decree dated 09.06.1952 in his favour. The judgment and decree were proved on record as Ex.P6 and Ex.P7, respectively. By virtue of the said decree, the plaintiff was declared to be the owner/landlord of the suit property, while the predecessors-in-interest of the defendants were held to be tenants thereunder. It was, therefore, pleaded that the defendants, being



successors-in-interest of the judgment-debtors against whom the decree of ejectment had been passed, had stepped into their shoes and were consequently bound by the said judgment and decree.

4. It was further pleaded that although the plaintiff had initiated execution proceedings for enforcement of the decree (Ex.P7), the execution application came to be dismissed in view of a compromise arrived at between the parties, whereby the defendants were permitted to continue in possession of the suit property as tenants on the same terms and conditions as embodied in the earlier rent deeds (Ex.P1 to Ex.P5). It was also averred that the defendants had instituted Civil Suit No.178 of 1977 in respect of a property other than the suit property, claiming ownership thereof. However, the said suit was dismissed vide judgment dated 31.10.1977.

5. Upon notice, the defendants caused appearance and filed their written statement contesting the suit. At the outset, they pleaded that the plaint was vague and defective and was, therefore, liable to be rejected under Order VII Rule 11 of the Code of Civil Procedure. They further asserted that they had no knowledge of any decree having been passed against them and that, in any event, any such decree, if in existence, was not binding upon them. The defendants also set up a specific plea of ownership over the suit property and categorically denied the existence of any landlord-tenant relationship between themselves and the plaintiff. Consequently, it was pleaded that they were fully entitled to raise construction over the suit property and were under no obligation to pay any rent to the plaintiff. In the alternative, the defendants also raised the



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plea of adverse possession.

6. Upon completion of the pleadings, the learned trial Court framed the necessary issues, whereafter both parties adduced evidence in support of their respective stands. Upon appreciation of the pleadings and the evidence on record, the learned trial Court decreed the suit in its entirety vide the impugned judgment and decree dated 05.06.1989. It was held that the rent deeds (Ex.P1 to Ex.P5) conclusively established that the plaintiff's father had inducted the predecessors-in-interest of the defendants as tenants over the suit property. The decree (Ex.P7) passed in Civil Suit No.387 of 1951, directing the ejection of the said tenants, was held to be a clear affirmation of the landlord-tenant relationship between the parties. The trial Court further held that the defendants had stepped into the shoes of the original tenants, namely, Sawai, Nathu and Daya Ram, and that defendant No.2, Nathu, had, in fact, been impleaded as defendant No.2 in Civil Suit No.387 of 1951 as well, as was evident from the *Shajra Nasab* exhibited as Ex.P17. It was further held that, following the dismissal of the execution application pursuant to the compromise, the defendants had been permitted to continue in possession of the suit property as tenants on the same terms and conditions as contained in the earlier rent deeds, subject to payment of annual rent at the rate of ₹40/-. The trial Court also recorded a categorical finding that, by denying the subsistence of the landlord-tenant relationship, the defendants had forfeited their tenancy rights, thereby entitling the plaintiff to recover possession of the suit property. The alternative plea of adverse possession raised by the defendants was also rejected.

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7. Deriving grievance from the findings and conclusions recorded by the learned trial Court, the defendants preferred a first appeal. The learned first appellate Court, however, affirmed the findings returned by the trial Court and dismissed the appeal vide judgment and decree dated 01.09.1992. It is against the aforesaid concurrent judgments and decrees that the instant Regular Second Appeal has been instituted by the defendants.

**SUBMISSIONS OF LEARNED COUNSEL FOR THE APPELLANTS/
DEFENDANTS**

8. The foremost submission advanced by learned counsel for the defendants is that the very identification of the suit property is erroneous and, therefore, the entire foundation of the plaintiff's case stands vitiated. It is contended that the suit property involved in the present proceedings is not the same property that formed the subject matter of Civil Suit No.387 of 1951 instituted for ejectment. In this regard, it is pointed out that even the learned first appellate Court has recorded a finding noticing a discrepancy in the western boundary of the suit property. It is further contended that the said finding is inherently contradictory and self-defeating, inasmuch as, while the learned first appellate Court has observed that the site plan (Ex.P11) depicts a *gali* (lane) on the western side of the suit property, the judgment dated 09.06.1952 (Ex.P6) rendered in Civil Suit No.387 of 1951 describes the western boundary as consisting of houses and *chhanas*. It is submitted that all four boundaries must correspond for the proper identification of the property, which is not the case in the present proceedings.



Consequently, it is argued that the property involved in the earlier suit is distinct from the suit property involved in the present proceedings and, therefore, the judgment and decree dated 09.06.1952, pertaining to a different property altogether, cannot be held to be binding upon the defendants.

9. The next limb of the submissions advanced on behalf of the defendants is founded upon the plaintiff's own pleadings in the earlier litigation, wherein he had admitted that the suit property had been leased to a third party. In support of this submission, reliance has been placed upon the judgment dated 31.10.1977 rendered in Civil Suit No.178 of 1977 instituted by the defendants, wherein the plaintiff had specifically pleaded that the suit property had been leased to one Kirpal Singh and not to the defendants or their predecessors-in-interest. It is, therefore, argued that once the plaintiff himself admitted that the suit property had been leased to Kirpal Singh, any claim for possession ought to have been directed against the said lessee alone. It is not the case that the defendants had re-entered into possession, rather it has been claimed that the defendants remained in continuous possession since the time of their ancestors. Thus, if the suit property had been leased in favour of a third party, it would unequivocally establish that the defendants were not in possession thereof as tenants under the plaintiff.

10. Proceeding further, learned counsel contends that the plaintiff has utterly failed to establish that any compromise had, in fact, been arrived at between him and the predecessors-in-interest of the defendants after the passing of the judgment and decree of ejectment dated

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09.06.1952. It is submitted that although an execution application was filed for enforcement of the said decree, the same came to be dismissed as unsatisfied vide order dated 22.10.1955. There is no documentary evidence whatsoever to establish the existence of any compromise whereby the defendants or their predecessors-in-interest were permitted to continue as tenants over the suit property. It is further contended that the mere oral testimony of the plaintiff in support of his own case is inherently self-serving and cannot be accepted in the absence of independent corroboration. It is further contended that, upon the passing of the decree of ejectment, the relationship of landlord and tenant stood terminated and, therefore, the plaintiff's plea that a fresh tenancy was thereafter created necessarily implies a break in the continuity of the earlier tenancy. The plaintiff cannot simultaneously contend that the tenancy continued uninterruptedly under the original rent deeds (Ex.P1 to Ex.P5) and also assert that a fresh tenancy came into existence pursuant to the alleged compromise. These two pleas are mutually destructive. It is further contended that once the relationship of landlord and tenant had ceased to exist, the defendants' continued possession thereafter acquired protection by virtue of adverse possession. However, this aspect has not been properly appreciated by either the learned trial Court or the learned first appellate Court.

11. Lastly, learned counsel for the defendants submits that the plaintiff has failed to establish his ownership over the suit property in accordance with law. It is argued that the plaintiff was required to succeed on the strength of his own title by producing cogent documentary

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evidence, such as a title deed, sale deed, mutation entry, revenue record or any other document evidencing his ownership over the suit property. However, no such document was ever produced. To lend vigour to this submission, reliance has been placed upon the judgments rendered in *“Nagar Palika, Jind vs. Jagat Singh, Advocate”, 1995 AIR (Supreme Court) 1377*, and *“Chetukuri Madhava Reddy vs. Manda Savithramma and another”, Appeal Suit No.267 of 2011, Decided on: 24.03.2025.*

SUBMISSIONS OF LEARNED COUNSEL FOR THE LEGAL REPRESENTATIVES OF THE RESPONDENT/PLAINTIFF (SINCE DECEASED)

12. Learned counsel representing the legal representatives of the deceased plaintiff jointly rebutted the elaborate submissions advanced on behalf of the defendants. It is submitted that, with regard to the issues as to whether the plaintiff is the owner of the suit property and entitled to recover possession thereof, whether the defendants are tenants in respect of the suit property, and whether they have forfeited their tenancy rights, the learned trial Court has returned categorical findings that the defendants denied the existence of a landlord-tenant relationship between themselves and the plaintiff and thereby forfeited their tenancy rights. Consequently, the plaintiff has been held entitled to recover possession of the suit property. It is further submitted that the learned trial Court has also recorded a specific finding that the predecessors-in-interest of the defendants, namely Sawai, Nathu and Daya Ram, were inducted as tenants over the suit property and were, vide judgment and decree dated 09.06.1952 passed in Civil Suit No.387 of 1951, held to be tenants and



ordered to be ejected therefrom, while the plaintiff was declared to be the owner thereof. It is contended that the findings recorded in the judgment and decree (*supra*) have attained finality and, therefore, cannot be assailed by the defendants in the present proceedings.

13. Furthermore, reliance has been placed upon Civil Suit No.178 of 1977 instituted by defendants/appellants No.1, 3 and 4, wherein they claimed exclusive possession of the site and asserted ownership on the basis of adverse possession. However, even in the said proceedings, reliance was placed upon the judgment and decree dated 09.06.1952 to hold that the defendants were tenants, and accordingly, the suit filed by the defendants was dismissed vide judgment dated 31.10.1977.

14. Consequently, it is contended that once Civil Suit No.387 of 1951 filed by the plaintiff seeking ejection of the predecessors-in-interest of the defendants was decreed, and Civil Suit No.178 of 1977 filed by defendants No.1, 3 and 4 was dismissed, the findings regarding the plaintiff's ownership and the tenancy of the predecessors-in-interest of the defendants, in respect of the suit property, have attained finality.

15. Resting their arguments, learned counsel submit that the defendants, by adopting contradictory stands, namely, (i) they are owners by adverse possession, (ii) they have inherited rights through their forefathers, (iii) they are not tenants etc., cannot, at the same time, contend that the suit property is different. The very plea of adverse possession advanced by the defendants estops them from disputing the identity of the suit property (**emphasis supplied**). It is further contended



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that the plea of adverse possession is also untenable, as none of the essential ingredients thereof stand satisfied. In support, reliance has been placed upon the verdict rendered by the Hon'ble Supreme Court in "*State of Haryana vs. Mukesh Kumar and others*", 2012(1) RCR (Civil) 17.

REASONS FOR DISMISSING THE INSTANT REGULAR SECOND APPEAL

16. Having heard learned counsel for the contesting litigants and upon a meticulous survey of the record, this Court is constrained to draw an inference that none of the submissions advanced on behalf of the defendants merit acceptance. The reasons for rejecting the said submissions are penned down hereinafter.

17. The preliminary submission raised on behalf of the defendants pertains to the incorrect identification of the suit property. A perusal of the record reveals that the defendants, in their written statement, have not specifically denied the contents of paragraph 1 of the plaint on merits, nor has it been specifically denied that the plaintiff is the owner of the suit property delineated by letters ABCDEFG, as shown in the site plan appended with the plaint. Likewise, the contents of paragraph 2 of the plaint have also not been specifically denied that the *kacha* construction within the suit property marked ABCDEFG was let out to the defendants. Consequently, the defendants are deemed to have admitted the contents of paragraphs 1 and 2 of the plaint and are, therefore, estopped from raising any dispute regarding identification of the suit property.

18. Furthermore, this Court finds merit in the submission of



learned counsel for the legal representatives of the deceased plaintiff that once the defendants have set up a plea of ownership by adverse possession, they cannot simultaneously dispute the identity of the suit property. The plea of adverse possession rules out any ambiguity with regard to identification of the suit property. This aspect has already been examined in detail by the learned first appellate Court, which, after considering the alleged discrepancy in the western boundary, has affirmed the finding that the suit property is the same as that involved in Civil Suit No.387 of 1951. The finding of fact cannot be interfered with in the absence of any perversity, which the defendants have failed to demonstrate. Consequently, the findings recorded by the learned Courts below in this regard do not warrant interference and are accordingly affirmed.

19. The second submission advanced on behalf of the defendants is that the suit property was leased out to a third party and not to the defendants or their predecessors-in-interest. However, the record clearly establishes that the plaintiff's father, namely Jawahar Singh, had let out the suit property to the predecessors-in-interest of the defendants vide rent deeds (Ex.P1 to Ex.P5) executed between 1935 and 1946, the originals whereof were exhibited as Ex.P18 to Ex.P22. The defendants have failed to cast any doubt on the authenticity of the said documentary evidence. Further, the *Shajra Nasab* (Ex.P17) placed on record reflects that defendant/appellant No.3, Dayala, is the successor-in-interest of Sawai, while defendant/appellant No.1 is the grandson of Saudagar, who was a defendant in the earlier civil suit. Notably, defendant/appellant No.1,



Hans Raj, while appearing in the witness box as DW4, did not deny that his grandfather's name was Saudagar. It is, therefore, clearly established that the defendants are the successors-in-interest of the original tenants, namely Sawai and Daya Ram, while the third original tenant, Nathu, is himself one of the defendants in the present proceedings. In the earlier Civil Suit No.387 of 1951, vide judgment and decree dated 09.06.1952, the predecessors-in-interest of the defendants, as well as defendant Nathu himself, were declared tenants, while the plaintiff was declared to be the owner of the suit property. No evidence to the contrary has been adduced by the defendants so as to persuade this Court to take a view different from that taken by the Courts below. Accordingly, this submission is also rejected.

20. The third submission advanced on behalf of the defendants relates to the absence of proof of any compromise between the predecessors-in-interest of the defendants and the plaintiff after the passing of the judgment and decree of ejectment dated 09.06.1952. This contention stands negated by the testimony of PW3 Raghbir Singh and PW4 Phuman Singh, who categorically deposed that the defendants had entered into a compromise with the plaintiff and were permitted to continue as tenants over the suit property on the same terms and conditions as embodied in the rent deeds (Ex.P1 to Ex.P5). This evidence was found sufficient by both the Courts below to hold that the tenancy continued even after the decree of ejectment. Consequently, the learned trial Court held that since the defendants remained in possession of the suit property even after passing of the decree of ejectment, their tenancy



stood protected in terms of Section 111(g) of the Transfer of Property Act, 1882.

21. Insofar as the plea of adverse possession is concerned, it is well settled that mere assertion of adverse possession does not convert permissive possession into hostile possession. A tenant cannot claim adverse possession against the landlord so long as the tenancy subsists. In the present case, the rent deeds clearly establish that the predecessors-in-interest of the defendants were inducted as tenants by the plaintiff's father. The decree of ejectment dated 09.06.1952 was never executed, as the execution application was dismissed vide order dated 22.10.1955 pursuant to a compromise between the parties, whereby the defendants were permitted to continue as tenants on the same terms and conditions as the original rent deeds. Thus, the possession of the defendants remained permissive in nature. Once possession is permissive, the plea of adverse possession against the true owner is legally unsustainable. It is the settled position of law that a party asserting adverse possession must specifically plead and prove all its essential ingredients. In the present case, the defendants have failed to discharge this burden. Accordingly, the plea of adverse possession has been rightly rejected by both the Courts below.

22. In *Mukesh Kumar's case (supra)*, the Hon'ble Supreme Court has observed that the doctrine of adverse possession has troubled a great many legal minds and time has come for change. It has further been held that adverse possession must be adequate in continuity, in publicity, and extent, and that a plea is required at the least to show when possession becomes adverse. In the present case, the plea of the defendants that



possession became adverse after the judgment and decree dated 09.06.1952 has already been rejected hereinabove, as the tenancy continued and the possession remained permissive.

23. The relevant paragraphs of the judgment rendered by the Hon'ble Supreme Court in *Mukesh Kumar's case (supra)* are extracted hereunder:-

“12. The Trial Court relied on the judgment of this Court in S.M. Karim v. Mst. Bibi Sakina AIR 1964 SC 1254 wherein this Court has laid down that the 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. The Court also held that long possession is not necessarily adverse possession.

35. 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 adverse possession. Though we got this law of adverse possession from the British, it is important to note that these days English Courts are taking a very negative view towards the law of adverse possession. The English law was amended and changed substantially to reflect these changes, particularly in light of the view that property is a human right adopted by the European Commission. This Court in Revamma (supra) observed that to understand the true nature of adverse possession, Fairweather v. St. Marylebone Property Co., [1962] 2 WLR 1020 : [1962] 2 All ER 288 can be considered where House of Lords referring to Taylor v. Twinberrow [1930] 2 K.B. 16 termed adverse possession as a negative and consequential right effected only because somebody else's positive right to access the court is barred by operation of law. As against the rights of the paper-owner, in the context of adverse possession, there evolves a set of competing rights in favour of the adverse possessor who has, for a long period of time, cared for the land, developed it, as against the owner of the property who has ignored the property.



43. *The Parliament must seriously consider at least to abolish “bad faith” adverse possession, i.e., adverse possession achieved through intentional trespassing. Actually believing it to be their own could receive title through adverse possession sends a wrong signal to the society at large. Such a change would ensure that only those who had established attachments to the land through honest means would be entitled to legal relief.*

44. *In case, the Parliament decides to retain the law of adverse possession, the Parliament might simply require adverse possession claimants to possess the property in question for a period of 30 to 50 years, rather than a mere 12. Such an extension would help to ensure that successful claimants have lived on the land for generations, and are therefore less likely to be individually culpable for the trespass (although their forebears might). A longer statutory period would also decrease the frequency of adverse possession suits and ensure that only those claimants most intimately connected with the land acquire it, while only the most passive and unprotective owners lose title.*

51. *In our considered view, there is an urgent need for a fresh look of the entire law on adverse possession. We recommend the Union of India to immediately consider and seriously deliberate either abolition of the law of adverse possession and in the alternate to make suitable amendments in the law of adverse possession. A copy of this judgment be sent to the Secretary, Ministry of Law and Justice, Department of Legal Affairs, Government of India for taking appropriate steps in accordance with law.”*

24. The fourth and final submission advanced on behalf of the defendants is that the plaintiff has failed to establish his title over the suit property. However, this contention is also devoid of merit, inasmuch as in Civil Suit No.387 of 1951, the plaintiff was declared owner of the suit property vide judgment and decree dated 09.06.1952, which has attained finality and is binding upon the defendants.

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25. In summa, the instant Regular Second Appeal is **dismissed** being devoid of merit, and the concurrent judgments and decrees passed by the learned trial Court and the learned first appellate Court are hereby affirmed.

26. Pending application(s), if any, also stand disposed of accordingly.

July 06, 2026
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No