



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

**Reserved on 31st of October, 2025
Pronounced on 12th of November, 2025
Uploaded on 12th of November, 2025**

RSA-1279-1991 (O&M)

Maktulo (Deceased) through LRs and othersAppellants

Versus

Ram Parkash (deceased) through LRs and anotherRespondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Vijay K. Jindal, Sr. Advocate with
Mr. Abhishek Shukla, Advocate
for the appellants.

Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Anmol Rattan Singh Dhillon, Advocate,
Mr. Vishal Pundir, Advocate
for respondent No.1.

Mr. Ashwani K. Chopra, Sr. Advocate with
Mr. Harminder Singh, Advocate and
Ms. Ridhima Khindria, Advocate
for respondent No.2.

PANKAJ JAIN, J.

Plaintiffs are in appeal. For convenience and to avoid confusion, the parties hereinafter are referred to as by their original position before the Court of the First Instance, i.e., the appellants as 'plaintiffs' and the respondents as 'defendants'.

2. The plaintiffs filed suit seeking decree of declaration to the effect that they are owners in possession of a land measuring 69 Kanals and



17 Marlas as detailed out in the headnote of the plaint and that order of partition dated 24.05.1984 *qua* suit land is bad, illegal and does not affect the rights of the plaintiffs.

3. Plaintiffs claim to be in cultivating possession of land measuring 69 Kanals 17 Marlas prior to the year 1941-42 and claim that they have become owners of the said land as their possession has always remained open, adverse and hostile. The defendants went behind their back without their knowledge and sought partition of the suit land. Assistant Collector, 1st Grade, Pathankot vide order dated 24.05.1984 partitioned the land without impleading plaintiffs as party. Plaintiffs still continue to be in actual physical possession of the suit land. The order regarding delivery of symbolic possession of the suit land to the defendants is illegal and not binding upon the rights of the plaintiffs. Plaintiffs cannot be dispossessed from the suit land under the garb of the partition.

4. Suit was contested by the defendants. Defendants denied that the plaintiffs have become owners of the land in question by way of adverse possession. Defendants claimed that the suit land was a joint-holding of the defendants along with custodian. The defendants have 1/3rd share in the total land. The same was so recognized by the statutory authorities vide order dated 06.04.1953. Prior to order of partition, dated 24.05.1984, the defendants were in possession as co-sharers and after partition they are in possession of their share.



5. Defendants also preferred counter-claim claiming possession from the plaintiffs. As per counter-claim, the defendants claimed that plaintiffs trespassed over the suit land and the defendants being owners thereof, are entitled to possession. The suit was decreed on 19.05.1986 by Sub Judge, 1st Class, Pathankot. In the appeal preferred by the defendants, the judgment and decree, dated 19.05.1986 passed by the Court of the First Instance were set aside. The matter was remanded back vide order dated 20.05.1988 by the Appellate Court framing additional issues for re-trial.

6. The suit was again tried on following issues:

1. Whether the plaintiffs are the owners in possession of the suit land being in adverse possession of the suit land for more than 40 years? OPP
2. Whether the plaintiffs are entitled to declaration and consequential relief of permanent injunction prayed for? OPP
- 2a. Whether the suit is barred by time? OPD
- 2b. Whether the counter claim filed by the defendants is not maintainable? OPP.
- 2c. Whether the defendants are entitled to possession of the disputed land on the basis of the counter-claim? OPD.
3. Whether the plaint has been properly valued for the purpose of Court fee and jurisdiction? OPP.
4. Whether the jurisdiction of this Court is barred u/S 158 of the Punjab Land Revenue Act? OPD
5. Whether the suit is not maintainable? OPD
6. Whether the suit is bad for mis-joinder and non-joinder of parties? OPD
and issues as follows framed by the Appellate Court:-
- 6a. Whether the land in suit formed part of Khewat No.266 of jamabandi for the year 1977-78 measuring 1490 Kanals 4



Marlas entered as Shamlat Deh and the defendants and the Custodian are the co-sharers in that. If so, to what effect? OPD.

6b. Whether the order of partition dated 24.5.84 passed by Assistant Collector Ist Grade, Pathankot is illegal, null and void? OPP.

7. Relief.

7. While answering Issue No.1, the Trial Court found that as per revenue record, it stands proved that the plaintiffs and their predecessors-in-interest have continued to be in possession of the suit land. Their possession had remained long and continuous without interruption. The Court found that the defendants instituted suit for partition in the year 1963 after getting their rights declared from Custodian (Judicial) in the year 1953. The plaintiffs were arraigned as defendants in earlier suit. In the written statement filed in the earlier suit filed on 03.02.1964 they asserted their title as owners. Vide order dated 25.07.1964, Exhibit P-16, the suit was withdrawn with liberty to file the fresh suit on the same cause of action after impleading custodian as a necessary party. Thus, it stands proved on record that the possession of the plaintiffs is adverse, hostile and continuous at least from the date of filing of the written statement in the earlier suit i.e. from February, 1964. Once, it stands proved that the plaintiffs are in possession of the suit land for last more than 12 years and their possession is adverse, hostile and continuous, they are entitled to decree of declaration to the effect



that they have become owners of the suit land by way of adverse possession. Issue No.1 was decided in favour of plaintiffs by the Trial Court.

8. On Issue No.6-A, the Court of the First Instance found that after the pleadings were amended, the plaintiffs relinquished their claim w.r.t. the land allotted to the custodian in the partition proceedings and is now suing in respect of land measuring 69 Kanals 17 Marlas allotted to the defendants. Thus, the non-impleadment of the custodian being co-sharer in the joint *Khata* shall have no effect on the present suit as the defendants are claiming exclusive claim over the suit land after partition order. The Court of the First Instance accordingly found that the Issue not being germane to the adjudication, has no bearing on the final judgment. The Court accordingly decreed the suit filed by the plaintiffs. The counter-claim preferred by the defendants was dismissed.

9. Dissatisfied with the judgment and decree passed by the Court of the First Instance, defendants preferred appeal.

10. The Lower Appellate Court held that the possession of the plaintiffs remained undisturbed and continuous after the year 1941-1942. However, mere continuous possession does not become adverse. By the dint of Section 8 of the Administration of Evacuee Property Act, 1950 (hereinafter referred to as 'the 1950 Act'), custodian assumed co-ownership in the joint land w.e.f. the year 1950. Even if the defendants never remained in possession of the land in dispute, their joint owner i.e., custodian is deemed to be in possession on behalf of all the co-owners. The



plaintiffs/respondents cannot claim their possession to be adverse without impleading all the co-owners including custodian, as defendants. In view of Section 8(4) of the 1950 Act, the plaintiffs cannot claim their possession adverse against custodian. The Lower Appellate Court, accordingly, reversed the findings on Issue No.1 holding that the plaintiffs are not entitled to decree of declaration that they are owners in possession of the suit land and dismissed the suit filed by the plaintiffs. Counter-claim preferred by the defendants was also dismissed granting liberty to the defendants to file a separate suit for possession of the suit land against plaintiffs/respondents.

11. Ld. Senior Counsel appearing for the appellants/plaintiffs has assailed the findings recorded by the Lower Appellate Court. He submits that the finding regarding plaintiffs being in possession of the suit land continuously from the year 1941-1942 as *Gair Dakhil Daran* is concurrent. Both the Courts below have held the plaintiffs to be in continuous possession of the suit land. In the year 1963, the defendants preferred suit for possession. Copy of the plaint, is Exhibit P-1. In the written statement filed on 03.02.1964, Exhibit P-2, the plaintiffs, in the present suit, specifically claimed that they were in adverse possession of the suit land for more than 12 years and thus have become owners by way of prescription. The present suit has been instituted by the plaintiffs in the year 1984. In the last 20 years, no effort was made by defendants to disrupt the hostile and continuous possession of plaintiffs. All the ingredients of adverse possession having been satisfied and proven, the Trial Court rightly decreed the suit



filed by the plaintiffs which has been wrongly reversed by the Lower Appellate Court.

12. He submits that the limitation even if taken to run from the date of filing of the written statement i.e., 03.02.1964, the defendants have lost their right to seek possession and thus the judgment & decree passed by the Lower Appellate Court, need to be reversed and the judgment & decree passed by the Trial Court need to be restored. Counsel relies upon ratio of law laid down in **Rameshwar Prasad vs. Municipal Corporation Sagar, 1992 MPLJ 764** and **Smt. Hussain Begam and others vs. Rafique Khan and others, Second Appeal No.97 of 2000 D/d 14.02.2018**.

13. Per contra, Ld. Senior Counsels representing the respondents have drawn attention of this Court to the order dated 06.04.1953, Exhibit DW-1/A to submit that the defendants are not allottees of the evacuee property. The land in question is a *Shamlat Deh*. The same vested in the proprietors of the village. $\frac{2}{3}$ rd land vested in Muslim proprietors. $\frac{1}{3}$ rd of *Shamlat* land vested in the defendants being proprietors. After Muslims migrated on partition to newly carved out country of Pakistan, the land was declared evacuee property. The defendants filed claim before the custodian. The same was accepted vide order dated 06.04.1953. Right of the defendants of being co-owners to the extent of $\frac{1}{3}$ share was accepted.

14. In the year 1963, suit was filed by Ram Parkash for himself and on behalf of defendant No.2, acting as his next friend. The same was withdrawn with liberty to file fresh one with better particulars as custodian



was not impleaded as a party to the *lis*. It has been contended that by virtue of Section 8(4) of 1950 Act, custodian became co-owner in possession of the suit land and continued to be so up to the year 1984 when the order of partition was passed. Till that date, custodian remained co-owner in possession of the suit property. Trite it is that possession of a co-owner is deemed to be possession of all the co-owners. The defendants remained in possession of the part of the suit land.

15. In the present suit, the plaintiffs initially claimed adverse possession over the entire land. However, later on relinquished their rights against custodian by amending their pleadings on 24.08.1988. Thus, the plaintiffs cannot claim ouster of the defendants prior to the date of order of partition. The Lower Appellate Court thus has rightly reversed the findings recorded by the Trial Court and dismissed the suit filed by the plaintiffs. Reliance is being placed upon ratio of law laid down in the case of **P.R. Nayak vs. Bejen Dadiba Bharucha, 1951 AIR (Bombay) 406, Budhi Singh vs. Sewa Singh, 1971 AIR (Himachal Pradesh) 29, Maqsood Alam vs. Mossamat Bibi Husna and another, 1971 AIR (Patna) 31, Sayed Salahuddin Ahmad vs. Janki Mahton and others, 1957 AIR (Patna) 549, Ram Chander vs. Bhim Singh and others, 2008(3) R.C.R.(Civil) 685, Mallikarjunaiah vs. Nanjaiah and others, 2019(3) R.C.R.(Civil)12, Nagabhushanammal (D) by LRs. vs. C. Chandikeswaralingam, 2016(2) R.C.R.(Civil) 469, Shri Uttam Chand (D) Through Lrs vs. Nathu Ram (D) Through Lrs. & others, (2020) 11 SCC 263, Chettan Kaur and**



others vs. Mohan Dass and others, 1966 PLJ 237, M. Radheshyamlal vs. V. Sandhya and another, 2024(2) R.C.R.(Civil) 351, Bhartu vs. Ram Sarup, 1981 P.L.J. 2004, Ram Chander vs. Bhim Singh and others, 2008(3) R.C.R.(Civil) 685, Banta Singh vs. Hakam Singh, 1994 P.L.J. 360, Gurdeep Singh vs. Rachhpal Singh, 1993 P.L.J. 98, Karcha Singh alias Gurbaksh Singh vs. Dewan Singh, R.S.A No.1961 of 1985 D/d. 19.02.1985 and Custodian-General, Evacuee Property, and others vs. Shanti Sarup, 1961 AIR Punjab and Haryana 497.

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

17. The issues that arise for consideration of this Court are:

- (i) *Whether the custodian being co-owner of the joint land, has bearing on the final result of the present lis?*
- (ii) *Whether the defendants being co-owners with the custodian, are deemed to be in possession of the suit land in the light of Section 8(4) of the 1950 Act? and*
- (iii) *Whether the plaintiffs/appellants can claim ownership by way of adverse possession, claiming that the plaintiffs declared their possession to be adverse by filing written statement in*



February, 1964 in the earlier suit?

18. During the course of arguments, this Court specifically asked Mr. Jindal, Senior Advocate regarding any dispute w.r.t. the land being evacuee property. He answered in negative and admitted that the suit land is evacuee property. Land was joint till order of partition dated 24.05.1984. The land in question is a *shamlat* land. The same vested in the proprietors of the village. Some of the proprietors of the village were Muslims who migrated on partition of the country in the year 1947. The land was declared evacuee property. It has come on record that the defendants preferred Claim No.429 before Assistant Custodian (Judicial), Gurdaspur on 05.07.1950 *qua* 1/3rd share in the land. The same was accepted vide order dated 06.04.1953 Exhibit DW1/A. In view of the acceptance of the claim of the defendants *qua* 1/3rd share in the suit land, they became co-owners to the extent of 1/3 share in the joint land along with the custodian.

19. Sections 8 and 9 of the 1950 Act, read as under:

“8. Vesting of evacuee property in the Custodians.-

(1) Any property declared to be evacuee property under section 7 shall be deemed to have vested in the Custodian for the State.--

(a) in the case of the property of an evacuee as defined in sub-clause (i) of clause (d) of section 2, from the date on which he leaves or left any place in a State for any place outside the territories now forming part of India ;



- (b) in the case of the property of an evacuee as defined in sub-clause (ii) of clause (d) of section 2, from the 15th day of August, 1947; and
- (c) in the case of any other property, from the date of the notice given under sub-section (1) of section 7 in respect thereof.

(2) Where immediately before the commencement of this Act, any property in a State had vested as evacuee property in any person exercising that powers of Custodian under any law repealed hereby, the property shall, on the commencement of this Act, be deemed to be evacuee property declared as such within the meaning of this Act and shall be deemed to have vested in the Custodian appointed or deemed to have been appointed for the State under this Act, and shall continue to so vest :

Provided that where at the commencement of this Act there is pending before the High Court the Custodian or any other authority for or in any State any proceeding under section 8 or section 30 of the Administration of Evacuee Property Ordinance, 1949 (XII of 1949), or under any other corresponding law repealed by the Administration of Evacuee Property Ordinance, 1949, (XXVII of 1949), then notwithstanding anything contained in this Act or in any other law for the time being in force, such proceeding shall be disposed of as if the definitions of 'evacuee property' and 'evacuee' contained in section 2 of this Act had become applicable thereto.

(3) Where any property in a State belonging to a joint stock company had vested in any person exercising the powers of a Custodian under any law previously in force, then nothing contained in clause (f) of section 2 shall affect the operation of sub-section (2), but the State Government



may, by notification in the Official Gazette, direct that the Custodian shall be divested of any such property in such manner and after such period as may be specified in the notification.

(4) Where after any evacuee property has vested in the Custodian any person is in possession thereof, he shall be deemed to be holding on behalf of the Custodian and shall on demand surrender possession of it to the Custodian or to any other person duly authorised by him in this behalf.

9. Power of Custodian to take possession of evacuee property vested in him.- If any person in possession of any evacuee property refuses or fails on demand to surrender possession thereof to the Custodian may use or cause to be used such force as may be necessary for taking possession of such property and may, for this purpose, after giving reasonable warning and facility to any woman not appearing in public to withdraw, remove or break open any lock, bolt or any door or do any other act necessary for the said purpose.”

(emphasis supplied)

20. Accordingly, in terms of Section 8(4), since the property vested in custodian, the plaintiffs who were in possession, were deemed to be holding possession thereof on behalf of the custodian. They were liable to surrender possession to the custodian on demand. The land remained joint. Since the possession *qua* share of the land is deemed to be possession under custodian, the other co-sharers including defendants are deemed to be in possession thereof. Reference can be made to law laid down by Division



Bench of this Court in **Sant Ram Nagina Ram v. Daya Ram Nagina Ram, AIR 1961 Punjab 528** which stands approved by Full Bench in the case of **Bhartu vs. Ram Sarup, 1981 PLJ 204**, observing as under:

“4. The *inter se* rights and liabilities of the co-sharers were settled by a Division Bench of this Court in a very detailed judgment in **Sant Ram Nagina Ram v. Daya Ram Nagina Ram, AIR 1961 Pb. 528**, and the following propositions, inter alia, were settled :-

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

(2) Possession of 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 by the other co-owners, it



is not open to any body to disturb the arrangement without the consent of others except by filing a suit for partition.”

(emphasis supplied)

21. The said relationship of co-ownership was snapped only in the year 1984. Till the date of partition, the possession of custodian is deemed to be possession on behalf of all the co-sharers. The plaintiff gave up his claim against the custodian. In view thereof, this Court finds that the answer to question No.1 as culled out in the afore-going para, is answered in affirmative. Thus, the finding recorded by the Court of the First Instance on Issue No.6-A, is unsustainable. It is held that the defendants along with custodian are co-owners of the suit land and they continued to be so till the date of order of partition. It cannot be said that after the plaintiffs gave up their rights against custodian, the issue has been rendered redundant.

22. The Issue No.2 being fully covered by ratio of law laid down by Full Bench of this Court in *Bhartu's* case (supra), the same is answered in favour of respondents/defendants.

23. The plaintiffs have claimed their ownership over the suit land by way of adverse possession. Trite it is that one who claims adverse possession is required to prove that his possession is not only continuous but hostile, exclusive and adverse to the true owner. In order to claim adverse possession under a co-sharer, possessee needs to prove ouster of the other co-owner. Admittedly, custodian always remained in possession of the suit land by virtue of Section 8(4) of 1950 Act. The possession of the custodian



is deemed to be possession of all the co-owners including the defendants. The plaintiffs failed to prove ouster of the defendants. Passage of time does not extinguish right of co-sharers until their ouster is proved. Continuous possession of plaintiffs thus has been rightly held to be not enough to prove their possession to be adverse.

24. In view of above, this Court finds no reason to interfere in the well reasoned findings recorded by the Lower Appellate Court. Resultantly, finding no merit in the present appeal, the same is ordered to be dismissed.

25. Pending application, if any, shall also stands disposed off.

November 12, 2025

(Pankaj Jain)
Judge

Dpr

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes