

Punjab-Haryana High Court

Krishan Dass & Others vs Swaran Kaur And Others on 1 July, 2026

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-1323-2026 (O&M)

09.04.2026.

Reserved on :

01.07.2026.

Pronounced on :

01.07.2026.

Uploaded on:

Krishan Dass and others

....Appellants

V/s

Swaran Kaur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Rakesh Gupta, Advocate and
Mr. Prince Goyal, Advocate
for the appellants.

Mr. Vikas Kumar, Advocate
for the caveators-respondents.

VIKRAM AGGARWAL, J. (ORAL)

This is defendant's second appeal against the judgment and decree dated 05.03.2026, passed by the Court of Additional District Judge, Sangrur, dismissing the appeal filed

against the judgment and decree dated 24.07.2025 passed by the Court of Civil Judge (Senior Division), Sangrur, vide which the suit for possession, mesne profits and recovery had been decreed.

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

3. The plaintiffs Swaran Kaur wife of Mahinder Singh and Tejpal Singh son of Mohinder Singh instituted a suit for possession on the basis of title of land measuring 24 bighas (fully described in the plaint) situated at village Bhatival Kalan (hereinafter referred to as the suit land) on the basis of Naksha Zeem and Sanad Taksim dated 13.10.2014 issued as per order of partition dated 11.09.2014 passed by AC First Grade Sangrur. Mesne profits since 13.10.2014 were also claimed.

RSA-1323-2026 (O&M) -2- 3.1. It was averred that the suit land was a part of land measuring 107 bighas 18 biswas. Birbal Dass, Balraj Dass, Nirmala Devi and Parwinder Kaur were owners of 230/2158 shares and Darshan Dass, Charanjit Kaur, Piara Singh, Murti Devi and Sapinder Pal Singh were also owners of an equivalent share.

3.2 These persons sold their share of land to the plaintiff No.1 vide registered sale deed No.979 dated 02-04.07.2012. The deed was executed by plaintiff No.2 on behalf of plaintiff No.1, being her general power of attorney holder. Possession is stated to have been given to plaintiff No.1 as a co-sharer as the vendors were also in possession as co-sharers. Mutation on the basis of the sale deed was sanctioned and entered in favour of plaintiff No.1 at No.6229.

3.3 The plaintiff initiated partition proceedings of total land measuring 107 bighas 18 biswas. The said proceedings were decided in favour of plaintiff No.1 and the suit land was allotted to the plaintiff. Thereafter, an application was moved for obtaining possession of the same. Warrants of possession were issued. However, at the time of transfer of possession, defendants raised objection and filed a civil suit (Suit No.144 dated 28.10.2014 titled as '[Jeet Dass and others Vs. Swaran Kaur and another](#)'). The suit was dismissed on 27.11.2018 by the Court of Additional Civil Judge (Senior Division), Sangrur. This suit had been filed on the basis of an earlier suit i.e. CS-309 dated 28.07.2006 titled as 'Ram Kishan etc. Vs. Bikram Dass etc.', which had been decided by the Court of Additional Civil Judge (Senior Division), Sangrur on 21.11.2012. This suit had been decreed in favour of the then plaintiffs, holding their possession over 35 bighas of a specific parcel of the land the defendants therein were restrained from alienating the suit land and from taking forcible possession. Appeal against [the said decision](#) had been dismissed on 01.11.2016.

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and appeal

3.4

The plaintiffs acquired knowledge of the said suit

2026.07.01 17:33
28.10.2014 decided

only after causing appearance in Civil Suit No.144 dated

RSA-1323-2026

(O&M)

-3-

on 27.11.2018. In Civil Suit No.144, the plaintiffs therein had also sought the relief of declaration that the partition order dated 11.09.2014 was illegal, null and void. The said suit was dismissed on 27.11.2018. Appeal against the same was also dismissed qua the relief of declaration and only injunction was granted restraining the defendants therein (plaintiffs herein) from illegally and forcibly dispossessing the plaintiffs therein (defendants herein). The issue as regards order dated 11.09.2014 being illegal, null and void, and not binding on the rights of the plaintiffs therein was decided against the plaintiffs. This finding was approved by the Appellate Court. 3.5 It was claimed that plaintiff No.1 was the exclusive owner of the suit land and was, therefore, entitled to take possession of the same from the defendants.

4. Defendants No.1 to 8, 12, 13 and 14 contested the suit, whereas, the other defendants were proceeded against ex parte. The contesting defendants filed their written statement, raising preliminary objections as regards maintainability, cause of action, locus standi etc. On merits, it was averred that the ancestors of the plaintiffs were owners in possession of 35 bighas of land and in the revenue record, defendants were recorded to be in long peaceful possession, which had ripened into ownership. It was claimed that after the death of Madan Lal, his legal heirs i.e. defendants had inherited his rights and had become owners of the suit land. 4.1 It was claimed that Birbal Dass etc. were not competent to sell the suit land to plaintiff No.1. It was claimed that possession had never been handed over and the mere sanction of mutation would not make plaintiff No.1 the absolute owner of the suit property as the adverse possession of the defendants had ripened into ownership. It was also claimed that Regular Second Appeal was pending in the High Court.

5. In the replication, averments made in the written statement was denied and those made in the plaint were reiterated. From the pleadings of 2026.07.01 17:33 the parties, following issues were framed:-

RSA-1323-2026 (O&M) -4- "1. Whether plaintiff is entitled for possession as prayed for?OPP

2. Whether plaintiff is entitled for recovery as prayed for?

OPP

3. Whether the suit of the plaintiff is not maintainable?

OPD

4. Whether the plaintiff has no cause of action and locus standi to file present suit?OPD

5. Whether the plaintiff has not come to the Court with clean hands?OPD 5-A) Whether the defendants have become owner of the suit property by way of adverse possession?OPD

6. Reply."

6. The trial Court decreed the suit vide judgment and decree dated 24.07.2025. Mesne profits were assessed as Rs.48,000/- per acre per year w.e.f. July, 2019. For the suit land measuring 24 bighas, it came to Rs.1,44,000/- per year. Future mesne profits were also assessed at the same rate till restoration of possession of the same. The appeal instituted against the said decision was also dismissed, leading to the filing of the instant second appeal.

7. Learned counsel for the appellant was heard.

8. Learned counsel for the caveators-respondents was also heard.

9. Learned counsel representing the appellants strenuously urged that the impugned decisions are not sustainable. Reference was made to the entire oral and documentary evidence led on the record of the case and it was submitted that the first Appellate Court did not decide the issue of adverse possession. It was averred that it had wrongly been held that no date of possession had been given, as a result of which the plea of adverse possession could not have been accepted. Reference was made to paragraph 13 of the written statement, wherein it had been averred that the adverse possession was w.e.f. 01.04.1984.

been established as a result of which the relief of injunction had been granted to them by the first Appellate Court vide judgment and decree dated 15.07.2019 (Ex.P-5).

9.2 It was also submitted that against [the said decision](#), RSA-4507- 2019 titled as '[Jeet Dass and others Vs. Swaran Kaur and another](#)' was filed before this Court on 03.10.2019 in which notice of motion was issued and alienation of the suit property was ordered to be stayed. However, the said appeal was dismissed for non-prosecution vide order dated 17.03.2025 with liberty to file an appropriate application for seeking revival of the same which was duly filed and that the application is pending adjudication. It was submitted that the issue as to whether the partition order dated 11.09.2014 was valid, is still alive before the High Court.

9.3 It was submitted that even the application for amendment of the written statement was wrongly dismissed by the first Appellate Court. 9.4 It was argued that vide judgment and decree dated 21.11.2012, the vendors of the plaintiffs had been restrained from transferring the suit property and, therefore, the alienation made in favour of the plaintiffs was non-est and the plaintiffs could not, therefore, claim possession on the basis of the said alienation.

10. Per contra, it was submitted by learned counsel for the respondents-caveators that there is no illegality in the impugned decisions. It was submitted that to succeed in the plea for having become owners by way of adverse possession, the initial possession should have been notorious, whereas the claim was of permissive possession. In this regard, reference was made to the judgment of the Hon'ble Apex Court in the case of [Government of Kerala and another Vs. Joseph and others](#), 2023 AIR SC 3988 and [Shri Uttam Chand \(D\) through LRs Vs. Nathu Ram \(D\) through LRs and others](#), 2020 AIR SC 461.

10.1 It was argued that the foundation for adverse possession should have been laid in the pleadings, which was not laid.

could not have been	10.2	It was also argued that contradictory pleas
		taken by the defendants.
continuously	10.3	It was further submitted that the defendants had

been litigating with regard to the land and, therefore, their possession could not have been said to be open and hostile.

10.4 While referring to the written statement, it was argued that the ingredients of adverse possession were not at all pleaded and, therefore, the said plea was rightly not accepted.

11. I have considered the submissions made by learned counsel for the parties.

12. 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 substantial question of law is required to be framed.

13. Concededly, after the suit land having been purchased by plaintiff No.1, she instituted an application for partition, which was allowed on 11.09.2014 by the Assistant Collector First Grade, Sangrur. 13.1 The intentions of the defendants were without bonafides from the very beginning as at the time of obtaining possession by the plaintiffs, they instituted Civil Suit No.144 dated 28.10.2014 titled as 'Jeet Dass etc. Vs. Swaran Kaur. This suit was dismissed by the Court of Additional Civil Judge (Senior Division) Sangrur on 27.11.2018. Appeal against the said 2026.07.01 17:33 decision was also dismissed as regards the relief of declaration on RSA-1323-2026 (O&M) -7- 05.07.2019 and only the relief of injunction was granted. This judgment dated 05.07.2019 was produced as Ex.P-5. Issues No.2A and 2B were as regards the order dated 11.09.2014 that whether it was illegal, null and void and not binding on the plaintiffs. Both these issues were decided against the plaintiffs therein (defendants herein) and were upheld by the Appellate Court. Only the issue of injunction was decided in favour of the plaintiffs because they were in

possession of the suit land. 13.2 Mere pendency of an RSA against [the said decision](#) would not affect the decision of the present appeal. Even otherwise, the RSA was dismissed for non-prosecution and has not been restored till today, though an application is stated to have been filed and is pending. 13.3 It was rightly found by both the Courts that since the ownership of the plaintiffs over the suit land as regards the suit land had duly been proved and the order of partition had also been passed and approved and the only relief granted to the defendants herein in the earlier litigation was as regards injunction of not dispossessing them except in due course of law, there was no reason to not accept the claim of the plaintiffs. 13.4 In so far as the issue of adverse possession is concerned, it was specifically pleaded in the written statement that the defendants were in long peaceful possession which had ripened into ownership. It is well settled that if the ownership on the basis of adverse possession is to be claimed, possession has to be hostile. It has repeatedly been held that a party claiming adverse possession must prove that his possession is peaceful, open and continuous and must be adequate in continuity, in publicity and in extent to show that it was adverse to the true owner. It is also well settled that mere possession does not ripen into ownership unless and until it is proved that the possessor held the property adverse to the title of the true owner. The person who claims to be in adverse possession is required to establish the date on which he came into possession, the nature of the possession, the factum of possession, knowledge to the true owner, duration of possession RSA-1323-2026 (O&M) -8- etc. It is also required to be pleaded as to when the possession became adverse. In the previous litigation, the claim of the defendants (plaintiffs therein) was that the possession of the suit land had been given to Madan Lal, ancestor of the plaintiffs on account of a compromise having been arrived at on 01.04.1959. The claim was, therefore, of permissive possession and not of hostile possession. Still further, apart from sketchy particulars, no ingredients of adverse possession were pleaded. 13.5 The Hon'ble Apex Court examined the entire law on the issue of adverse possession in the case of ['Government of Kerala and another Vs. Joseph and others'](#) and held as under:-

"20. The principle of adverse possession has been defined by the Privy Council in *Perry v. Clissold* [1907] A.C. 73 in the following terms:

"It cannot be disputed that a person in possession of land in the assumed character of the owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provisions of the statute of Limitation applicable to the case, his right is forever extinguished and the possessory owner acquires an absolute title."

21. Before proceeding to do so, it is essential to take note of the law governing such a claim. After a perusal and consideration of various judgements rendered by this Court, the following principles can be observed:

21.1 Possession must be open, clear, continuous and hostile to the claim or possession of the other party; all three classic requirements must coexist-nec vi, i.e., adequate in continuity; nec clam, i.e., adequate in publicity; and nec precario, i.e., adverse to a competitor, in denial of title and knowledge;

RSA-1323-2026 (O&M) -9-

(a) In [Radhamoni Debi v. Collector of Khulna](#) 1900 SCC OnLine PC 4, the Privy Council held that-

"The possession required must be adequate in continuity, in publicity, and in extent to show that it is possession adverse to the competitor."

(b) Further, the Council Maharaja Sri Chandra Nandi v. Baijnath Jugal Kishore AIR 1935 PC 36 observed-

"It is sufficient that the possession should be overt and without any attempt at concealment, so that the person against whom time is running ought, if he exercises due vigilance, to be aware of what is happening."

(c) A Bench of three judges of this Court in [Parsinni v. Sukhi](#) (1993) 4 SCC 375 held that "Party claiming adverse possession must prove that his possession must be 'nec vi, nec clam, nec precario' i.e. 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."

(d) In [Karnataka Board of Wakf v. Govt. of India](#) (two- Judge Bench) (2004) 10 SCC 799 it was held:-

"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."

This case was relied on in the case of [M. Venkatesh v. Bangalore Development Authority](#) (2015) 17 SCC 1 (three- Judge Bench), [Ravinder Kaur Grewal v. Manjit Kaur](#) (2019) 8 SCC 729 (three-Judge Bench).

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(e) This Court in a recent case of [M Siddiq \(D\) through LRs v. Mahant Suresh Das & Ors.](#) (2020) 1SCC 1 (five-Judge Bench) reiterated this principle as under -

"748. A person who sets up a plea of adverse possession must establish both possession which is peaceful, open and continuous - possession which meets the requirement of being 'nec vi nec claim and nec precario'. To substantiate a plea of adverse possession, the character of the possession must be adequate in continuity and in the public because the possession has to be to the knowledge of the true owner in order for it to be adverse. These requirements have to be duly established first by adequate pleadings and second by leading sufficient evidence."

21.2 The person claiming adverse possession must show clear and cogent evidence substantiate such claim; This Court in [Thakur Kishan Singh v. Arvind Kumar](#) (1994) 6 SCC 591 (two-Judge Bench) held that -

"5. A possession of a co-owner or of a licensee or of an agent or a permissive possession to become adverse must be established by cogent and convincing evidence to show hostile animus and possession adverse to the knowledge of real owner. Mere possession for howsoever length of time does not result in converting the permissive possession into adverse possession..."

Reference may also be made to [M. Siddiq](#) (supra).

21.3 Mere possession over a property for a long period of time does not grant the right of adverse possession on its own;

(a) In [Gaya Prasad Dikshit v. Dr. Nirmal Chander and Anr.](#) (two-Judge Bench) (1984) 2 SCC 286, this court observed-

"1... It is not merely unauthorised possession on MANI KUMAR termination of his licence that enables the licensee RSA-1323-2026 (O&M) -11- to claim title by adverse possession but there must be some overt act on the part of the licensee to show that he is claiming adverse title. It is possible that the licensor may not file an action for the purpose of recovering possession of the premises from the licensee after terminating his licence but that by itself cannot enable the licensee to claim title by adverse possession. There must be some overt act on the part of the licensee indicating assertion of hostile title. Mere continuance of unauthorised possession even for a period of more than 12 years is not enough."

Reference may also be made to [Arvind Kumar](#) (supra); [Mallikarjunaiah v. Nanjaiah](#) (2019) 15 SCC 756 (two- Judge Bench); [Uttam Chand](#) (supra).

21.4 Such clear and continuous possession must be accompanied by animus possidendi - the intention to possess or in other words, the intention to dispossess the rightful owner; in [Karnataka Board of Wakf](#) (supra) it was observed-

"...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..."

(a) The case of [Annakili v. A. Vedanayagam](#) (2007) 14 SCC 308 (two-Judge Bench) also shed light on this principle as under -

"24. Claim by adverse possession has two elements:

(1) the possession of the defendant should become adverse to the plaintiff; and (2) the defendant must continue to remain in possession for a period of 12 years thereafter. Animus possidendi as is well known is a requisite ingredient of adverse possession. It is now a well-settled principle of law MANI KUMAR that mere possession of the land would not ripen RSA-1323-2026 (O&M) -12-

into possessory title for the said purpose. Possessor must have animus possidendi and hold the land adverse to the title of the true owner. For the said purpose, not only animus possidendi must be shown to exist, but the same must be shown to exist at the commencement of the possession..."

(b) In [Des Raj and Others v. Bhagat Ram](#) (2007) 9 SCC 641 (two- Judge Bench) this Court observed -

"21. In a case of this nature, where long and continuous possession of the plaintiff-respondent stands admitted, the only question which arose for consideration by the courts below was as to whether the plaintiff had been in possession of the properties in hostile declaration of his title vis-à-vis his co- owners and they were in know thereof."

(c) This court in [L.N. Aswathama v. P. Prakash](#) (2009) 13 SCC 229 (two-Judge Bench) had observed that permissive possession or possession in the absence of Animus possidendi would not constitute the claim of adverse possession.

(d) It was also held in the case of [Chatti Konati Rao v. Palle Venkata Subba Rao](#) (2010) 14 SCC 316 (two-Judge Bench)-

"15. Animus possidendi as is well known is a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until the possessor holds the property adverse to the title of the true owner for the said purpose. The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and that possession was open and undisturbed..."

(Emphasis supplied) Referring to the above judgement [Subha Rao](#) (supra) this MANI KUMAR Court has reiterated the cardinality of the presence of RSA-1323-2026 (O&M) -

13- Animus possidendi in a case concerning adverse possession in [Brijesh Kumar & Anr. v. Shardabai](#) (dead) by LR's (2019) 9 SCC 369 (two- Judge Bench).

21.5 Such a plea is available not only as a defence when title is questioned, but is also available as a claim to a person who has perfected his title;

The prior position of law as set out in [Gurudwara Sahab v. Gram Panchayat Village Sirthala](#) (2014) 1 SCC 669 (two- Judge Bench) was that the plea of adverse possession can be used only as a shield by the defendant and not as a sword by the plaintiff. However, the position was changed later by the decision of this Hon'ble Court in the case of [Ravinder Kaur](#) (supra) had held that - "...Title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of [Article 65](#) of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession..."

The position in [Ravinder Kaur](#) (supra) was followed in [Narasamma & Ors. v. A. Krishnappa \(Dead\) Through LR's](#). 2020 (15) SCC 218 (three-Judge Bench).

21.6 Mere passing of an ejectment order does not cause break in possession neither causes his dispossession; In [Balkrishna v. Satyaprakash](#) (2001) 2 SCC 498 (two- Judge Bench) this Court held :

"...Mere passing of an order of ejectment against a person claiming to be in adverse possession neither causes his dispossession nor discontinuation of his possession which alone breaks the continuity of possession."

13.6 A cumulative examination of the factual situation along with the law on the subject reveals that the plea of adverse possession did not stand proved.

MANI KUMAR 14. Insofar as mesne profits are concerned, though no argument was RSA-1323-2026 (O&M) -14- addressed, this Court does not find any illegality in the same as reasonable amount was assessed as mesne profits depending upon the normal rates on which agricultural land is leased out.

14.1 Having examined the matter in its entirety, this Court does not find any illegality in the factual or legal findings recorded by both Courts, warranting interference in second appeal.

15. In view of the above, the instant appeal is found to be devoid of merit and is accordingly, dismissed. The application for additional evidence has also been dismissed by way of a separate order of even date.

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

(VIKRAM AGGARWAL)
JUDGE

Pronounced on 01.07.2026
Mani Kumar

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