



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

**RSA-326-1998 (O&M) with
XOBS-3-C-1999
Reserved on :-08.05.2026
Date of Pronouncement:-13.05.2026
Uploaded on:-14.5.2026**

Bishan Dai (Since Deceased) Through Her LRs and Others

... Appellants

Versus

Lajwanti and Others

... Respondent(s)

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CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. B.R. Mahajan, Senior Advocate, with
Ms. Nikita Goel, Advocate,
Mr. Daanish Mahajan, Advocate, and
Ms. Perna Malhotra, Advocate,
for the appellants.

None for the respondents.

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VIRINDER AGGARWAL, J.

RSA-326-1998

1. The present Regular Second Appeal (hereinafter referred to as the "RSA") has been preferred against the decree and judgment dated 10.10.1997 passed by the learned Additional District Judge, Amritsar, whereby both the appeal as well as the cross-objections came to be dismissed and the decree and judgment rendered by the learned Trial Court was affirmed.



2. Briefly stated, the appellants–plaintiffs instituted a suit for declaration claiming themselves to be owners in possession of the suit property, along with a consequential relief of permanent injunction restraining the defendants from alienating the suit land. In the alternative, a decree for possession was also sought. The case set up by the plaintiffs was that Mool Chand, husband of plaintiff No.1 Bishan Dei and father of plaintiff Nos.2 to 4, had purchased the suit property from the Rehabilitation Department, Government of India, pursuant whereto a conveyance deed had been issued in his favour, thereby rendering him the exclusive owner in possession of the suit land. It was pleaded that the defendants had no right, title, or interest in the suit property and had, with mala fide intent, forcibly occupied a portion thereof and attempted to raise unauthorized construction thereon.

2.1. It was further averred that Mool Chand had earlier instituted a suit for permanent injunction in the year 1977, during the pendency whereof the defendants made a statement undertaking not to raise any forcible construction over the suit property, whereupon the said suit was dismissed as withdrawn on 30.09.1978. According to the plaintiffs, the defendants subsequently started threatening to alienate the suit property and to forcibly dispossess the plaintiffs therefrom, thereby giving rise to the present cause of action.

3. Upon notice, the defendants appeared and contested the suit by filing a written statement, wherein the ownership and possession of the plaintiffs over the suit property were specifically denied. Preliminary objections regarding limitation and maintainability were also raised. The



defendants asserted that the father of defendants No.2 and 3 and husband of defendant No.1, namely Kalu Ram, had been allotted the suit property after the partition of the country and had become owner thereof on the basis of purchase with effect from 15.06.1960. It was further pleaded that Kalu Ram remained owner in possession of the suit property during his lifetime and, after his demise, the defendants succeeded to and continued in possession thereof. The defendants also averred that the sale certificate pertaining to the allotment, though not immediately traceable, would be produced in due course, and that the sale in favour of Kalu Ram had been duly confirmed by the Managing Officer, Amritsar vide communication dated 08.11.1976.

4. Subsequently, the plaintiffs filed a replication controverting the assertions and objections raised in the written statement and reiterating the averments contained in the plaint. Upon a comprehensive and meticulous examination of the pleadings and the rival contentions advanced by the parties, the learned Trial Court deemed it appropriate to crystallize the controversies involved and, for the purpose of an effective and legally coherent adjudication, framed the following issues for determination:-

1. *Whether the plaintiff is owner in possession of the suit property?
OPP.*
2. *If issue No. 1 is not proved whether the plaintiff is entitled to the possession of the suit property? OPP.*
3. *Whether the suit is maintainable in the present form ? OPP.*
4. *Whether the suit is properly valued for the purpose of court fee and jurisdiction ? OPP.*



5. *Whether the suit is within time? OPP.*
6. *Whether the plaint suffers from infirmities. If so to what effect?*
OPD.
7. *Whether the plaintiff is entitled to the injunction prayed for ?*
OPP.
- 7A. *Whether the defendants have become the owners of the property in*
dispute by virtue of their adverse possession ? OPD.
8. *Relief.*

5. Upon conclusion of the trial, the learned Trial Court partly decreed the suit by holding the plaintiffs to be owners in possession of portions 'A' and 'B' of the suit property as delineated in the site plan Ex.P4. However, insofar as portion 'C' depicted therein was concerned, the learned Trial Court recorded a finding that the plaintiffs were not in possession thereof and, while dismissing the relief of possession qua the said portion, observed under Issue No.2 that the plaintiffs were at liberty to avail an independent remedy by instituting a separate suit for possession. The learned Trial Court further held that the suit was within limitation and that the defendants had failed to establish perfection of title by way of adverse possession. Aggrieved by the said findings, the appellants–plaintiffs preferred an appeal, whereas the respondents–defendants filed cross-objections.

6. The learned First Appellate Court dismissed both the appeal and the cross-objections, principally holding that the suit instituted in the year 1983 was barred by limitation on the premise that the defendants were allegedly in possession of the suit property since the years 1952–53. Dissatisfied with the decree and judgment so passed, the appellants–



plaintiffs instituted the present appeal, which came to be admitted for hearing vide order dated 30.04.1998.

7. Having examined the material available on record, this Court finds that the appellants–plaintiffs successfully established that the suit property had been allotted to Mool Chand as evacuee property and that a conveyance deed dated 23.04.1978, registered on 09.08.1978 (Ex.P1), had been validly executed in his favour. The said allotment was assailed by the respondents–defendants before the Settlement Commissioner; however, upon spot inspection conducted on 12.07.1979, the Settlement Commissioner found Mool Chand, predecessor-in-interest of the appellants–plaintiffs, to be in possession of the property. Consequently, the appeal preferred by the respondents–defendants was dismissed vide order Ex.PX, and the revision petition thereagainst was also dismissed vide order dated 17.09.1979 (Ex.PY).

7.1. A perusal of Ex.PX unequivocally demonstrates that the Settlement Commissioner, after conducting spot inspection and obtaining measurements through the field staff, concluded that Mool Chand was in possession of property No.19/13, which had been transferred to him by the Settlement Officer in the year 1959, and that the entire sale consideration thereof had already been paid. In view of the aforesaid findings, the conclusion recorded by the learned First Appellate Court that the respondents–defendants had remained in possession since 1952–53 is wholly unsustainable and contrary to the documentary evidence on record. Once Mool Chand was found to be in possession as late as January, 1979,



the suit for possession instituted in the year 1983 was manifestly within the prescribed period of limitation.

7.2. Furthermore, the learned Trial Court committed a patent error in relegating the appellants–plaintiffs to an independent remedy for possession qua portion ‘C’, despite the fact that an alternative relief of possession had already been specifically claimed in the suit itself. Consequently, the findings recorded by the learned Additional District Judge, Amritsar on Issue No.5, as also those recorded by the learned Trial Court on Issue No.2, cannot be sustained in the eyes of law and are hereby reversed. Both the issues are accordingly decided in favour of the appellants–plaintiffs.

7.3. As a necessary corollary, the appellants–plaintiffs, being the lawful owners of the suit property, are held entitled to possession of portion ‘C’ as delineated in the site plan Ex.P4. Accordingly, the present appeal is **allowed**, the decree and judgment passed by the learned First Appellate Court are set aside, and the suit of the appellants–plaintiffs stands decreed in its entirety.

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8. In view of the fact that the respondents failed to enter appearance or avail effective legal representation during the later stage of pendency of the appeal preferred by the appellants, the cross-objections bearing **XOBS-3-C-1999**, subsequently instituted by the respondents, are liable to be dismissed for non-prosecution.

8.1. The respondents having failed to diligently pursue and substantiate the pleas raised therein, the said cross-objections accordingly



stand **dismissed in default for want of prosecution**, without any adjudication on the merits of the claims asserted therein.

9. Consequent upon the final adjudication of the principal *lis*, all pending miscellaneous applications, if any, arising out of or ancillary to the present proceedings, shall stand disposed of by necessary implication. In view of the conclusions recorded hereinabove, no separate or further orders are required to be passed in respect of such applications, the same having been rendered wholly infructuous and academic.

13.05.2026
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No