



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

**RSA-312-2023 (O&M)
Decided on:-24.03.2026**

Sham Lal and others

..Appellants...

vs.

Smt. Sumitra Devi (deceased) thr. her LR's and
others

...Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Ranjit Saini, Advocate,
for the appellants.

HARKESH MANUJA J. (Oral)

CM-1151-C-2023

For the reasons mentioned in the application, the same is
allowed. Deficiency in court fee is allowed to be made good.

CM-1152-C-2023

Application is allowed with all just exceptions.

Main case

1. The defendants are in appeal. First Appeal filed by the appellants-
defendants was dismissed by the learned First Appellate Court. For the sake
of convenience, the parties are referred to as per their status in the Civil Suit.
2. By way of present appeal, challenge has been laid to judgment
and decree dated 26.04.2022 passed by the Court of learned Additional
District Judge, Yamuna Nagar (hereinafter to be referred as the "First



Appellate Court"), whereby an appeal filed at the instance of appellants-defendants, preferred against the judgment and decree dated 02.08.2016 passed by the Court of learned Civil Judge (Jr. Division), Bilaspur (hereinafter to be referred as the "*trial Court*"), decreeing the suit for possession with consequential relief of permanent injunction, was dismissed, resultantly, affirming the judgment and decree passed by the learned trial Court.

3. Briefly stating, the plaintiffs, claiming themselves to be owners-in-possession of the land measuring 3 marla (*gair mumkin*) comprised in Khewat No.74 Khatauni No.128 Rectangle No.71, Khasra No.6, situated at village Gulabgarh, Tehsil Chhachhrauli, District Yamuna Nagar filed a suit for possession with consequential relief of permanent injunction. It was pleaded that the suit property was originally owned and possessed by their predecessor, Genda Ram, and upon his demise, the same devolved upon his legal heirs. It was pleaded that the defendants encroached upon the suit property by temporarily placing building material thereon on the pretext of having purchased the adjoining *bara* and intending to raise construction thereupon; however, they subsequently commenced construction over the suit property itself. Hence, the suit for possession with consequential relief of permanent injunction was filed at the instance of plaintiff.

3. Upon notice, the defendants No.2 to 4 appeared and filed their joint written statement, submitting that neither the plaintiffs nor their predecessor-Genda Ram, had any right, title or interest in the suit land, rather the *bara* in dispute was owned and possessed by the defendants, having been inherited from their predecessor-Bakhtawara Ram. It was further alleged that the plaintiffs were in possession of a different *bara*. It was also alleged that various *baras* were allotted by the Gram Panchayat to



the residents of the village and at the time of sanctioning mutation of the said plots/*baras*, the concerned Halqa Patwari assigned incorrect numbers, resulting in erroneous revenue entries in the record.

3.1. It has further been stated that in order to resolve the dispute, a Panchayat was convened in the year 1990, wherein it was mutually agreed that possession of the allottees would be retained as per their actual possession on site and would be treated as an exchange inter se the parties. In consequence of the said arrangement, the allottees came to occupy *baras* bearing numbers different from those reflected in the revenue record and the plaintiffs, taking undue advantage of such incorrect entries, had instituted the suit on false and frivolous grounds. It was further alleged that the plaintiffs did not have any right, title or interest in the suit property, hence, prayed for dismissal of the suit.

4. On the basis of the pleadings of the parties, the learned trial Court framed the following issues:-

“1. Whether the plaintiffs are entitled to possession of land measuring 0 Kanal 3 Marlas (Gair Mumkin Plot), as fully detailed and described in the head note of the plaint? OPP.

2. Whether plaintiffs are entitled to the relief of permanent injunction as prayed for? OPP

3. Whether the present suit is not maintainable? OPD

4. Relief.”

5. The learned trial Court vide its judgment and decree dated 02.08.2016 decreed the suit in favour of plaintiffs. Aggrieved thereof, first appeal was preferred at the instance of defendants, which was dismissed by the Court of learned Additional District Judge, Yamuna Nagar at Jagadhri vide judgment and decree dated 26.04.2022, thereby, affirming the decision of the learned trial Court.



6. Impugning the aforesaid judgments and decrees passed by the Courts below, learned counsel for the defendants submits that both the Courts below have erred in law ignoring the fact that the plaintiffs failed to prove their case. He further submits that the Courts below failed to consider the plea of adverse possession raised by the defendants on the ground that since the defendants had denied the ownership of the plaintiffs, the said plea could not be accepted. He further contends that the learned Courts below failed to appreciate the oral as well as documentary evidence adduced by the defendants to establish their absolute ownership and further their longstanding, continuous and peaceful possession over the suit property. He also contends that both the Courts below erroneously relied upon wrong revenue entries and thus, the findings recorded being based on conjectures and surmises, were liable to be set aside.
7. I have heard learned counsel for the appellant and gone through the paper-book.
8. In the present case, the dispute pertains to a *gair mumkin* plot measuring 03 marlas, which was admittedly allotted by the Gram Panchayat to Genda Ram, the predecessor-in-interest of the plaintiffs. Upon his demise, the said plot devolved upon his legal heirs, and the plaintiffs became owners-in-possession of the same. The said fact stands duly corroborated by the revenue record, particularly *jamabandi* (Ex. P1) for the year 2009–2010, wherein Genda Ram is recorded as owner-in-possession of the suit property. In fact, the status of the plaintiffs as legal heirs of Genda Ram was not disputed by the defendants. Rather, the defendants' own witnesses, namely, Karta Ram (DW1) and Pirthi (DW2), admitted this fact during their cross-examination.
9. Even otherwise, the defendants did not dispute the aforesaid



entries, although they pleaded that incorrect numbers were allocated by the 2026:PHHC:050600 then Halqa Patwari; however, they failed to adduce any cogent and reliable evidence to substantiate their claim and failed to render any explanation as to which plot was allocated to their predecessor. As regards the contention raised on behalf of the appellant with respect to adverse possession, the same is equally untenable as it is a settled principle of law that a plea of adverse possession necessarily needs to be established at least through an overt act to the knowledge of the true owner whereas in the present case, neither any such fact was pleaded or proved. It was not established as to from which date or time the possession of defendants became adverse to the plaintiffs. Further, except for bald assertions, no evidence was led to establish the same and thus, the Courts below have rightly observed that the plaintiffs have successfully proved their ownership and the findings so recorded by both the learned Courts below are based on due appreciation of evidence.

13. Resultantly, in view of the discussion made herein-above, finding no illegality of perversity in the concurrent findings of facts and law, recorded by the Courts below; there being no misreading or misinterpretation of pleadings and the evidence, the present appeal being devoid of merits is thus, dismissed.

14. Pending application, if any, also stands disposed of.

24.03.2026
sonika

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:	Yes
Whether reportable:	Yes