2026:PHHC:053251

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-2646-1989(O&M)
Reserved on: 29.01.2026
Pronounced on: 07.04.2026

Gulzari Begum (since deceased) through her LRs

… Appellant

Versus

Liakat Ali Khan and others

… Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Kanwal Goyal, Advocate,
Mrs. Shruti Jain Goyal, Advocate,
Ms. Sheena Dahiya, Advocate,
Ms. Komal Klana, Advocate, and
Ms. Anagya Chauhan, Advocate, for the appellant.

Mr. Arihant Jain, Advocate,
Mr. Rishav Jain, Advocate, and
Mr. Kanish Jindal, Advocate, for respondents No.1 & 2.

None for respondents No.4 to 6.

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VIKRAM AGGARWAL, J.

This is plaintiff's appeal preferred against the judgment and decree dated 31.08.1989, passed by the Court of Additional District Judge, Sangrur, dismissing the appeal against the judgment and decree dated 12.02.1985, passed by the Court of Sub Judge Ist Class, Malerkotla, vide which the suit for declaration and permanent injunction filed by the appellant/plaintiff (Gulzari Begum) was dismissed.

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

3. One Sajawar Khan had three sons, namely, Ahmed Khan, Dilawar Jang Khan and Safder Jang Khan. Dilawar Jang Khan had two

daughters, namely, Mukhtiar Begum (defendant No.3) and Gulzari Begum (plaintiff). Safdar Jang Khan had two wives Amina Begum and Hafizan Begum. From the marriage of Amina Begum, he had two sons, namely, Shaukat Ali Khan (defendant No.1) and Liakat Ali Khan (defendant No.2). One daughter of Ahmed Khan, namely, Zahida Begum was impleaded as defendant No.7. Defendants No.4 to 6 were the persons to whom some land is stated to have been alienated and were tenants on the said land.

4. Gulzari Begum instituted a suit for declaration that she along with defendant No.3 (Mukhtiar Begum) was the owner in possession of 1/3rd share of land owned by Sajawar Khan. The case set up was that Sajawar Khan was the owner of land measuring 18 kanals and 8 marlas (fully described in the plaint), situated at Village Malerkotla. Upon his death, the said land was inherited in equal shares by his three sons, namely, Ahmed Khan, Dilawar Jang Khan and Safder Jang Khan, vide mutation No.5990, dated 25.11.1968. Further, after the death of Safder Jang Khan, 1/3rd share devolved in equal shares upon defendants No.1 & 2 vide mutation No.5991, dated 25.11.1968. The case of the plaintiff was that defendants No.1 & 2, in connivance with revenue officials, got 1/3rd share of Dilawar Jang Khan mutated in their (defendants No.1 & 2) favour vide mutation No.5992, dated 25.11.1968. It was averred that this land was to be mutated in their favour since they were entitled to inherit 1/3rd share of Dilawar Jang Khan. It was claimed that the said mutation bearing No.5992 had been got executed behind the back of the plaintiff and defendant No.3, without any notice to them. Accordingly, the mutation No.5992, dated 25.11.1968, was not binding upon the plaintiff and defendant No.3.

4.1 It was claimed that defendants No.4 to 6, namely, Bashir, Babu and Sadiq had been cultivating the suit land for the last 20/25 years and had been paying *Batai* to the plaintiff as regards her share. It was also alleged that defendants No.1 & 2 had sold some part of the land to defendants No.4 to 6 and their father Hussaini alias Saini vide mutation No.11002, as a result of which they had been impleaded as parties in the suit.

5. Defendants No.1 & 2 opposed the suit. The stand taken was that the parties were governed by custom in matters of inheritance and succession, as per which the daughters of deceased did not inherit the land belonging to their father.

5.1 It was claimed that defendants No.1 & 2 had perfected their title by way of adverse possession since they were in possession of the suit land ever since mutation No.5992, dated 25.11.1968, was sanctioned.

5.2 It was also claimed that the suit was barred by time as Dilawar Jang Khan had expired in 1964-65, and that cause of action to the plaintiff had arisen at that time. It was claimed that under the circumstances, the suit instituted in 1983 was barred by limitation.

5.3 It was further averred that the plaintiff had never been in possession of the suit land and, therefore, a simplicitor suit for declaration was not maintainable without the relief of possession having been claimed.

5.4 It was further claimed that defendants No.1 & 2 had sold major part of the suit land to Hussaini alias Saini vide mutation No.11002 and they were the owners of land measuring 6 kanals and 15 marlas only.

5.5 However, the relationship between the parties was admitted. The pedigree table was stated to be correct. It was admitted that initially

Sajawar Khan was the owner of land measuring 18 kanals and 8 marlas, and that after his death, the same had devolved in equal shares upon Ahmed Khan, Dilawar Jang Khan and Safder Jang Khan. It was also admitted that after the death of Safder Jang Khan, his land had been inherited by defendants No.1 & 2. However, it was contended that in view of the prevailing custom, the land owned by Dilawar Jang Khan was mutated in their favour vide mutation No.5992, dated 25.11.1968. It was claimed that the said mutation had rightly been sanctioned.

5.6 The other defendants did not cause appearance and were accordingly proceeded against *ex parte*.

6. From the pleadings of the parties, the following issues were framed:-

> **"1. Whether the plaintiff and defendants Nos.1 to 3 are governed by custom in matters of succession and inheritance? If so what that custom is and its effect? OPD.**
>
> **2. Whether defendants Nos.1 and 2 have become the owners of the land in dispute by adverse possession? OPD.**
>
> **3. Whether the suit of the plaintiff is within time? OPP.**
>
> **4. Whether suit is not maintainable in the present form? OPD.**
>
> **5. Whether the plaintiff is estopped by her act and conduct from filing the present suit? OPD.**
>
> **6. Whether defendants Nos.4 to 6 are bonafide purchasers for consideration of a portion of the land in dispute? If so, its effect? OPD.**
>
> **7. Whether the plaintiff and defendant No.3 are the owners in possession of 1/3rd share of the land in dispute after the death of their father Dilawar Jang Khan? OPP.**
>
> **8. Relief."**

7. Parties led their respective evidence.

8. The trial Court, vide judgment and decree dated 12.02.1985, dismissed the suit. It was held that defendants No.1 & 2 had not been able to prove that any custom existed as per which the daughters would not be entitled to inherit the land of their deceased father. However, it was held that defendants No.1 & 2 had proved that they had perfected their title by way of adverse possession. It was further held that the suit was barred by limitation. It was also held that a mere suit for declaration without seeking the relief of possession, once the plaintiff was not in possession of the suit land, was not maintainable.

8.1 Aggrieved by the said decision, the plaintiff preferred an appeal, which too was dismissed by the first appellate Court while upholding the judgment and decree of the trial Court. Against the said decision, the instant appeal was preferred.

9. Learned counsel for the parties were heard.

10. Mr. Kanwal Goyal, learned counsel representing the appellant strenuously urged that both Courts have gravely erred in non-suiting the plaintiff. It was argued that defendants No.1 & 2 could not prove that there was some custom prevalent amongst them, as per which the daughters were not entitled to inherit the land of their father after his death.

10.1 As regards the issue of adverse possession, it was argued that defendants No.1 & 2 could not have raised the question of title and adverse possession simultaneously. It was further argued that even otherwise, the defendant(s) had not been able to prove that they had perfected their title by way of adverse possession, as the ingredients to prove the same had not been fulfilled. Further, it was not pleaded as to when they had come in possession

of the suit land and that such possession was open, hostile, and continuous from a particular point of time.

10.2 As regards limitation, learned counsel submitted that when a suit is filed on the basis of inheritance, there is no limitation.

10.3 Arguing on the point of maintainability, learned counsel submitted that the suit land was agricultural land and, therefore, relief of possession could have been claimed, as the Civil Courts have no jurisdiction to grant possession. It was submitted that the only relief that could have been claimed was of declaration with consequential relief of permanent injunction.

10.4 It was submitted that the mutation, in any case, had been sanctioned at the back of the plaintiff and defendant No.3, without any notice to them. It was argued that it had duly come in evidence of the defendants itself that plaintiff and her sister were *Parda Nasheen* ladies and, therefore, they had not acquired knowledge of the mutation having been sanctioned.

10.5 It was argued that the plaintiff and defendant No.3 had become co-sharers of the suit land along with defendants No.1 & 2 after the death of their father and, therefore, there was no requirement to seek the relief of possession, which, even otherwise, could not have been granted by the Civil Court.

10.6 Learned counsel further argued that strangely all three mutations, bearing Nos.5990, 5991 & 5992, were sanctioned on the same day, i.e. on 25.11.1968, meaning thereby they had been got sanctioned by defendants No.1 & 2 in connivance with revenue officials. It was argued that

otherwise, mutations should have been sanctioned after the death of respective landowners, and not on one day.

10.7 It was also argued that while non-suiting the plaintiff, the trial Court relied upon an overruled judgment. It was submitted that the judgment in the case of **Naginder Singh and others v. Chanan Singh and others, 1983 CLJ 432** had been overruled by a Division Bench of this Court in **Mohinder Singh (died) and Rep. by his Lrs. and Anr. v. Kashmira Singh, 1985 AIR (P&H) 215**.

10.8 As regards alienation of the suit land by defendants No.1 & 2, it was submitted that alienation would be taken to have been made from the share of defendants No.1 & 2 and not from the share of the plaintiff. It was argued that efforts were made to serve defendants No.4 to 6 so that they could have deposed that they had been paying *Batai* to the plaintiff, but they never appeared. It was argued that they did not even contest the suit and, therefore, the plaintiff could not have been non-suited on account of non-examination of defendants No.4 to 6. Learned counsel referred to the entire oral and documentary evidence led on the record of the case to bring home his point.

11. In support of his contentions, learned counsel placed reliance upon the decisions rendered by the Supreme Court of India in **Narasamma and others v. A. Krishnappa (Dead) Through Lrs., 2020 AIR (SC) 4178; Akkamma and others v. Vemavathi and others, 2021 (18) SCC 371; Sk. Golam Lalchand v. Nandu Lal Shaw @ Nand Lal Keshri @ Nandu Lal Bayes and others, 2024 AIR (SC) 4193; Hussain Ahmed Choudhury and others v. Habibur Rahman (Dead) Through LRs and others, 2025 INSC**

553; the Madras High Court in **C.R. Ramaswami Ayyangar (Minor) v. C.S. Rangachariar and others, 1940 AIR (Madras) 113;** and this Court in **Smt. Saman Kaur and others v. Amrik Singh and others 1967 PLR 862; Kishori Lal and another v. Mst. Man Bai and others, 1960 AIR (Punjab) 485; Harnam Kaur and others v. Malkiat Singh and others, 1986 PLJ 687 (LFID # 52662); Harnam Kaur v. Malkiat Singh 1989(1) RRR 475 (LFID # 52023); Gurcharan Singh and others v. Surjit Kaur and others, Vol.CXLI-(2005-3) PLR 232 [RSA-209-2005, decided on 08.05.2005]; Inder Singh (since deceased, through his LRs) v. Mahla Singh (since deceased, through his his LRs) and others, 2014(2) RCR (Civil) 90; Sarabjeet Kaur and others v. Gurmel Kaur and others, 2010(5) RCR (Civil) 723; Anari v. Om Parkash, 2007(1) PLJ 46; Mohinder Singh (died) and Rep. by his Lrs. and Anr. v. Kashmira Singh, 1985 AIR (P&H) 215.**

12. Per contra, learned counsel for respondents No.1 & 2 (defendants No.1 & 2) submitted that there is no illegality in the impugned judgments and decrees.

12.1 It was argued that in a second appeal, there can be no interference with concurrent findings of facts. It was argued that the findings on adverse possession would be taken to findings of facts and, therefore, the same cannot be interfered with.

12.2 Learned counsel submitted that the scope of interference in second appeal is very much limited and Section 41 of the Punjab Courts Act, 1914 (for short, '**the Punjab Courts Act**') also does not permit interference in the concurrent findings of facts.

12.3 It was argued that a mere suit for declaration without seeking relief of possession, once the plaintiff was not in possession of the suit land, was not maintainable.

12.4 It was argued that defendants No.1 & 2 had successfully proved that they had perfected their title by way of adverse possession.

12.5 Learned counsel also argued that the suit filed by the plaintiff was miserably barred by time as it was instituted on 02.02.1983, after the sanction of mutation No.5992 dated 25.11.1968.

12.6 Learned counsel referred to the entire oral and documentary evidence led on the record of the case.

13. In support of his contentions, learned counsel placed reliance upon the decisions of the Supreme Court of India in **Anathula Sudhakar v. P. Buchi Reddy (Dead) By LRs and others, 2008(4) SCC 594; Gurdev Kaur and others v. Kaki and others, 2007(1) SCC 546; Narayanan Rajendran and another v. Lekshmy Sarojini and others, 2009(5) SCC 264; Laxmidevamma and others v. Ranganath and others, 2015(2) SCC (Civil) 575; Ram Saran and another v. Smt. Ganga Devi, 1973(2) SCC 60;** the Madhya Pradesh High Court in **Rasid and another v. Salil and others (SA-1393-2018, decided on 17.06.2019, LFID # 1509296),** and this Court in **Neter Pal v. Manohar Lal (RSA-1032-1999, decided on 01.10.2025); Amritpal Kaur v. Mohinder Kaur and others, 2022(3) RCR (Civil) 316; Arjan v. Sada Rama and others, 2010(66) RCR (Civil) 94; Kidara v. Mange, 2001(2) RCR (Civil) 669; Mohinder Singh v. Shamsher Singh, 2010(2) RCR (Civil) 505; Lal Singh v. Ran Singh, 2009(10) RCR (Civil) 477; Kartar Singh v. Ujagar Singh, 1993(2) RRR**

603 (LFID # 49750; Jagir Singh v. Smt. Gurdial Kaur, 1992(2) RRR 92 (LFID # 51060); Satnam Singh v. Jit Ram, 2019(4) RCR (Civil) 213.

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

15. 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. Chandrika and others, (2016)6 SCC 157**, followed by the judgments in the case of **Kirodi (since deceased) through his LR v. Ram Parkash and others, (2019) 11 SCC 317** and **Satender and others v. 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.

16. Reverting to the matter in hand, there are certain admitted facts. It is a conceded position that Sajawar Khan was owner in possession of land measuring 18 kanals and 8 marlas. Upon his death, the said land was inherited by his three sons, namely, Ahmed Khan, Dilawar Jang Khan and Safder Jang Khan, in equal shares. The pedigree table was also admitted. It was also admitted that all three mutations bearing No.5990, 5991 & 5992 were sanctioned on the same day, i.e. on 25.11.1968. First of all, this very fact raises an eyebrow. The dates of death of Sajawar Khan, Dilawar Jang Khan and Safder Jang Khan are different. Under the circumstances, it is not understood as to why all mutations were sanctioned together on 25.11.1968.

16.1 Concededly, there was no notice to the plaintiff and defendant No.3 about sanction of mutation No.5992. It came in evidence of DW2 that the plaintiff and defendant No.3 were *Parda Nasheen* ladies. Once mutation after the death of Dilawar Jang Khan was being sanctioned in favour of defendants No.1 & 2, due notice should have been given to the plaintiff and defendant No.3. Nothing was brought on record by defendants No.1 & 2, despite a specific stand having been taken by the plaintiff in this regard.

16.2 In so far as the stand of defendants No.1 & 2 that they were governed by custom, as per which the daughters would not inherit the land of their deceased father, is concerned, they were not able to prove the same and both Courts recorded concurrent findings that defendants No.1 & 2 had failed to prove that any such custom existed. Once this was so, it would have to be seen as to under what circumstances, the suit land was mutated in favour of defendants No.1 & 2 without any notice to the plaintiff and defendant No.3. Therefore, it appears to be a clear-cut case of connivance because otherwise there was no reason for mutation No.5992 being sanctioned in favour of defendants No.1 & 2. Nothing was brought on record that plaintiff or defendant No.3 was present when the mutation was sanctioned and effected. Under the circumstances, it is clear that defendants No.1 & 2 were unable to prove that they had acquired title over the suit land on account of existence of custom.

16.3 Defendants No.1 & 2 then took a contradictory plea of adverse possession. First of all, in the considered opinion of this Court, the plea of ownership by way of title and adverse possession cannot co-exist. In taking this view, this Court is supported by a decision of the Apex Court in

Narasamma and others v. **A. Krishnappa (Dead) Through Lrs.** (supra), wherein it was held that a plea of title and adverse possession could not be advanced simultaneously, from the same date.

16.4 A similar view was taken by the Apex Court in **Dagadabai** v. **Abbas, (2017) 13 SCC 705.**

16.5 Coming back to the present case, the claim of defendants No.1 & 2 is based on mutation No.5992, dated 25.11.1968. They claim both title as also the adverse possession from the same date. In view of the judgment in the case of **Dagadabai** (supra), such a plea is not legally permissible.

16.6 Even otherwise, to prove a plea of adverse possession, certain conditions would be required to be fulfilled. The principles governing the plea of adverse possession are well known and well settled by the Apex Court. The said principles were noticed by a coordinate Bench in **Kirpal** v. **Surender Mohan and another (RSA-3295-2019, decided on 27.08.2025:-**

> **"8. The Hon'ble Supreme Court in the case of Dagadabai V/s Abbas [(2017) 13 SCC 705] has laid down the following principles governing the adverse possession:**
>
> > **'15. Third, the plea of adverse possession being essentially a plea based on facts, it was required to be proved by the party raising it on the basis of proper pleadings and evidence. The burden to prove such plea was, therefore, on the defendant who had raised it. It was, therefore, necessary for him to have discharged the burden that lay on him in accordance with law. When both the courts below held and, in our view, rightly that the defendant has failed to prove the plea of adverse possession in relation to the suit land then such concurrent findings of fact were unimpeachable and binding on the High Court.**
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> > **16. Fourth, the High Court erred fundamentally in observing in para 7 that, "it was not necessary for him**

(defendant) to first admit the ownership of the plaintiff before raising such a plea". In our considered opinion, these observations of the High Court are against the law of adverse possession. It is a settled principle of law of adverse possession that the person, who claims title over the property on the strength of adverse possession and thereby wants the Court to divest the true owner of his ownership rights over such property, is required to prove his case only against the true owner of the property. It is equally well settled that such person must necessarily first admit the ownership of the true owner over the property to the knowledge of the true owner and secondly, the true owner has to be made a party to the suit to enable the Court to decide the plea of adverse possession between the two rival claimants.

17. It is only thereafter and subject to proving other material conditions with the aid of adequate evidence on the issue of actual, peaceful, and uninterrupted continuous possession of the person over the suit property for more than 12 years to the exclusion of true owner with the element of hostility in asserting the rights of ownership to the knowledge of the true owner, a case of adverse possession can be held to be made out which, in turn, results in depriving the true owner of his ownership rights in the property and vests ownership rights of the property in the person who claims it.

18. In this case, we find that the defendant did not admit the plaintiff's ownership over the suit land and, therefore, the issue of adverse possession, in our opinion, could not have been tried successfully at the instance of the defendant as against the plaintiff. That apart, the defendant having claimed the ownership over the suit land by inheritance as an adopted son of Rustum and having failed to prove this ground, he was not entitled to claim the title by adverse possession against the plaintiff.'

In Ravinder Kaur Grewal V/s Manjit Kaur [(2019) 8 SCC 729] it was inter alia held that:

> **'60. The adverse possession requires all the three classic requirements to co-exist at the same time, namely, nec vi i.e. adequate in continuity, nec clam i.e. dequate in publicity and nec precario i.e. adverse to a competitor, in denial of title and his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it. Adverse possession cannot be decreed on a title which is not pleaded. Animus possidendi under hostile colour of title is required. Trespasser's long possession is not synonymous with adverse possession. Trespasser's possession is construed to be on behalf of the owner, the casual user does not constitute adverse possession. The owner can take possession from a trespasser at any point in time. Possessor looks after the property, protects it and in case of agricultural property by and large the concept is that actual tiller should own the land who works by dint of his hard labour and makes the land cultivable. The legislature in various States confers rights based on possession'."**

16.7 In the present case, defendants No.1 & 2 did not even plead as to when they had come in possession of the suit land. They were unable to prove that their possession was adverse to the plaintiff, or that it was in denial of the plaintiff's title and to the plaintiff's knowledge. They were further unable to prove that the said possession was open, hostile and peaceful. In fact, the plea of adverse possession was raised only on the basis of long possession which, as per the Apex Court in **Ravinder Kaur Grewal v. Manjit Kaur** (supra) is not synonymous with adverse possession.

17. In the case of **Kishori Lal and another v. Mst. Man Bai and others** (supra), it was also held by a Division Bench of this Court that

exclusive possession of a larger share by a co-sharer cannot itself be regarded as wrongful or adverse unless it amounts to an open and hostile overt act to the knowledge of the ousted co-owner. It was held that mere mutation entries made at the back of the ousted co-sharer cannot be construed to amount to an overt act:-

> **"14. The Judicial Committee has in Debendralal Khan's case authoritatively laid, down that the nature of the requisite possession must necessarily vary with the nature of the subject possessed, and that the classical requirement namely *nec vi nec clam nec precario* must be established. The counsel submits that according to the authorities cited above Smt. Man Bai could with reasonable and due diligence have come to know of the change in the revenue entries and of the possession of the proprietors. In my view the counsel is not right in his submission. On the facts of this case it is obvious that a lady in the position of Smt. Man Bai, living in a different village and believing Mst. Makhman to be alive and in possession of property, not have with due diligence come to know either of the change in the revenue entries or of the alleged exclusive and hostile possession of the plaintiffs and defendants Nos. 8 to 12. It is clear that the mutation proceedings of 1930 were kept secret from Smt. Man Bai and the entry in question was secured behind her back and without her knowledge. The trial Court has dealt with this matter at considerable length under Issue No. 6 and I am also inclined to agree with its reasoning and conclusions. The counsel for the appellant's has not been able successfully to assail them. Smt. Man Bai is a co-sharer, being also one of the proprietors and, therefore, exclusive possession of a larger share by the other co-sharers cannot by itself be regarded as wrongful or adverse unless it amounts to an open and hostile overt act to the knowledge of the ousted co-owner. See Prem Singh v. Tej Singh, AIR 1950 East Punjab 252. Ouster obviously implies denial of the right of the claimant to his or her knowledge, actual or presumed."**

18. In the considered opinion of this Court, this finding on the plea of adverse possession was not a pure finding of fact but was based upon total misreading and misconstruing of evidence led on the record of the case as also misapplication of the settled position of law.

19. Coming to the issue of limitation, it is well settled that when a suit is instituted on the basis of inheritance, there is no limitation. A Division Bench of this Court in the case of **Mohinder Singh (died) and Rep. by his Lrs. and Anr. v. Kashmira Singh** (supra) held that no period of limitation is prescribed for filing a suit for possession on the basis of inheritance. In this judgment, the Division Bench overruled the judgment in the case of **Naginder Singh and others v. Chanan Singh and others** (supra), which had been relied upon by both Courts while non-suiting the plaintiff.

20. A similar view was taken by a coordinate Bench in the case of **Harnam Kaur v. Malkiat Singh** (supra), wherein it was held that no limitation is prescribed for a suit on the basis of title, and that the suit filed after 12 years would not be barred. The coordinate Bench also relied upon the Division Bench's judgment in the case of **Mohinder Singh (died) and Rep. by his Lrs. and Anr. v. Kashmira Singh** (supra) while taking this view.

21. Now coming to the issue as to whether a mere suit for declaration would be maintainable, this Court is of the considered opinion that the suit was duly maintainable. Concededly, the suit land is agricultural land and, therefore, no possession could have been granted by the Civil Court and the jurisdiction would vest only with the Revenue Courts to grant possession by way of partition. Consequently, the plaintiff rightly instituted

the suit for declaration along with consequential relief of permanent injunction. In the case of **Akkamma and others** v. **Vemavathi and others** (supra), the Apex Court held that there is no bar in the Specific Relief Act, 1963 in granting standalone declaratory decree. In that case, the trial Court had come to a conclusion that the plaintiff was the owner of the suit property but since no relief of possession had been sought, declaration of title could not be granted. The Apex Court discarded the said line of reasoning observing that it seemed to be a misconstruction of the provisions of Section 34 of the Specific Relief Act:-

> **"17. So far as the reliefs claimed in the suit out of which this appeal arises, prayer for declaration was anchored on two instances of interference with the possession of land of the plaintiffs and injunctive relief for restraint from interference with the property was also claimed. But possession of the said property by the original plaintiff was not established. The alternative relief sought to be introduced at a later stage of the suit was also found to be incapable of being entertained for the reason of limitation. Thus, the foundation of the case of the plaintiffs based on these two factual grounds collapsed with the fact-finding Courts rejecting both these assertions or allegations. But that factor ought not to be a ground for denying declaration of ownership to the plaintiffs. There is no bar in the Specific Relief Act, 1963 in granting standalone declaratory decree. The Trial Court came-to-a-positive finding that the original plaintiff was the owner of the suit property. But it held that in absence of declaration of relief of possession by the plaintiff, declaration of title cannot be granted. We have already expressed our disagreement with this line of reasoning. It seems to be a misconstruction of the provisions of Section 34 of the 1963 Act. The Trial Court and the High Court have proceeded on the basis that the expression "further relief" employed in that proviso must include all the reliefs that ought to have been claimed or might have been granted. But in our**

view, that is not the requirement of the said proviso. This takes us to the corollary question as to whether the 1987 suit could have been held to be barred under the principle contained in Order 2, Rule 2 of the Code of Civil Procedure. 1908. In our opinion, the said provisions of the Code would not apply in the facts of this case, as the denial of legal right in the 1987 suit is pegged on two alleged incidents of 15th and 25th February, 1957. These allegations can give rise to claims for declaration which obviously could not be made in the 1982 suit. The claim for declaratory decree could well be rejected on merit, but the suit in such a case could not be dismissed invoking the principles incorporated in Order 2, Rule 2 of the Code of 1908.

18. The High Court has proceeded on the footing that in the subject-suit, the original plaintiff must have had asked for relief for recovery of possession and not having asked so, they became disentitled to decree for declaration and possession. But as we have already observed, the proviso to Section 63 of the 1963 Act requires making prayers for declaration as well as consequential relief. In this case, if the relief on second count fails on merit, for that reason alone the suit ought not to fail in view of aforesaid prohibition incorporated in Section 34 of the 1963 Act."

22. A similar view was taken by a coordinate Bench in **Sarabjeet Kaur and others** v. **Gurmel Kaur and others** (supra):-

"...The last argument raised by the learned counsel for the appellant is that the present suit has been filed by the plaintiff simply for declaration without seeking possession and is not maintainable in view of Section 34 of the Specific Relief Act, 1963. Section 34 of the Specific Relief Act, 1963 Specific Relief Act, 1963 reproduced as under:

> **"Discretion of court as to declaration of status or right- Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:**

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation-A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and whom if in existence, he would be a trustee."

According to he Proviso to the aforesaid Section, no Court shall make any such declaration where the plaintiff being able to seek further relief then a mere declaration of title, omits to do so. It is no-where provided that when a suit for declaration is filed possession is necessarily to be asked for, however, on a perusal of the plaint, it is very much clear that the plaintiff has sought relief of declaration and consequent permanent injunction as well as any other relief as the Court may deem fit. The prayer clause of the plaint is reproduced as under:

"Hence, it is prayed that a decree for declaration to the effect that the plaintiff is owner and in possession of ½ share of the land measuring 92 Kanals 9 Marlas, as fully detailed and described in the heading of the pliant, situated at village Singhpura Tehsil and District Sirsa, as being the legally wedded wife of the deceased Shri Jai Singh alias Hardam Singh son of Ram Ditta Singh, and that the entries of the revenue records such as Mutation No. 3684 sanctioned on 24.4.1999 by A.C. Ist Grade, In favour of the present defendant Sarbjeet Kaur for the above said total land measuring 92 kanals 9 marlas relating to Jai Singh alias Hardam Singh (since deceased) is wrong, incorrect, against law and facts, null and void, inoperative ineffective on the rights of the plaintiff and as such the same is liable to be ignored and liable to be corrected in favour of the plaintiff to he extent of her ½ share of the total land, and further the alleged Will alleged to have been executed by Shri Jai Singh alias Hardam Singh in favour of the defendant Sarbjeet Kaur, registered in the office of Sub Registrar, Kalanwali at Sr. No. 101 on dated 28.10.1997 is also wrong, incorrect, as a result of fraud,

> **misrepresentation, concealment of the facts and as such the same are also liable to be ignored and set aside and as a consequential relief of permanent injunction restraining the defendant from illegally and forcibly interfering into the peaceful cultivating possession of the plaintiff over the suit land, and further from alienating the whole of the total suit land, including the share of the plaintiff, by way of sale, transfer, exchange, mortgage or by creating any bar on the suit land, be passed in favour of the plaintiff and against the defendant with costs of this suit.**
>
> **Any other relief which this Hon'ble court may deem fit and proper in favour of the plaintiff, in addition to it or in the alternative of it may also be granted."**

23. In the case of **Anari v. Om Parkash** (supra), a coordinate Bench held that the argument that a simplicitor suit for declaration is not maintainable, was devoid of merit. It was held that the plaintiff in that case would be a co-owner and having sought a declaration and after having got the same, she would be entitled to seek partition from the Revenue Courts. It was held that since the land in dispute was agricultural land, it was not necessary for the plaintiff to claim any consequential relief of possession as partition could be effected only by the Revenue Court and not from any other Court for actual and physical possession:-

> **"6. The other argument that the simpliciter suit for declaration is not maintainable, is again without any merit in view of the findings. The plaintiff would be a co-owner being daughter of Dhapa along with Smt. Anari. The plaintiff has sought declaration to the said extent. Having got the declaration, the plaintiff would be entitled to seek partition from the Revenue Courts. Since land in dispute is agricultural land, it was not necessary for the plaintiff to claim any consequential relief of possession as partition could be effected**

only by the Revenue Court and not from any other Court for actual physical possession."

24. I have perused the judgments, reliance upon which was placed by learned counsel for the parties. In so far as the judgments relied upon by learned counsel for the appellant are concerned, reference to most of them has already been made in the preceding paragraphs. As regards the judgments relied upon by learned counsel for the respondent(s), they do not come to the aid of the respondent(s) in view of the findings recorded in the preceding paragraphs.

25. In view of the foregoing discussion, the impugned judgments and decrees are found to be unsustainable. Consequently, the instant appeal is allowed. The impugned judgments and decrees are set aside and the suit of the plaintiff is decreed. Decree-sheet be drawn accordingly.

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

(VIKRAM AGGARWAL)
JUDGE

April 7, 2026
Rajan
Uploaded on: 07.04.2026

Whether speaking / reasoned: Yes
Whether Reportable: Yes