**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA**

**RSA Nos. : 527 of 2014 & 664 of 2015**
**Reserved on : 28th July, 2026**
**Decided on : 18th August, 2026**
**Uploaded on : 18th August, 2026**

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**1. RSA No.527 of 2014**

Subhash Chand & Others ...Appellants

Versus

Mahant Ram and Others .....Respondents

**2. RSA No. 664 of 2015**

Subhash Chand & Others ...Appellants

Versus

Bohra and Others .....Respondents

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*Coram*:

***The Hon'ble Mr. Justice Virender Singh, Judge.***

*Whether approved for reporting?* ***Yes***

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**1. <u>RSA No.527 of 2014</u>**

For the Appellant : Mr. Adarsh K. Vashista, Advocate.

For the Respondents : Mr. Prittam Singh Chandel, Advocate, for respondents No.1, 2, and 4.

Mr. Bhupender Gupta, Senior Advocate with Mr. Ajeet Pal Singh Jaswal, Advocate for respondent No.5.

None for respondents No.3(a) to 3(e).

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[1]Whether reporters of Local Papers may be allowed to see the judgment?

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**2. RSA No. 664 of 2015**

For the Appellants : Mr. Adarsh K. Vashista, Advocate.

For the Respondents : Mr. Bhupender Gupta, Senior Advocate with Mr. Ajeet Pal Singh Jaswal, Advocate, for respondent No.1.

Mr. Prittam Singh Chandel, Advocate, for respondents No.2, 3 and 4(a) to 4(d).

Name of respondent No.5 is ordered to be deleted vide order dated 16.12.2025.

None for respondents No.6 and 7.

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**Virender Singh, Judge**

The above titled appeals are being disposed of by a common order, as, both the appeals have arisen out of the judgments and decrees dated 10.06.2014 and 07.07.2014, passed by the learned Additional District Judge, Ghumarwin, District Bilaspur, H.P., (hereinafter referred to as the 'learned First Appellate Court').

2. **RSA No.527 of 2014**, has been filed by the appellants, under Section 100 of the Code of Civil Procedure (hereinafter referred to as 'the CPC'), against the judgment and decree dated 10.06.2014, passed by the learned First Appellate Court, in Civil Appeal No.63/13 of 2013, titled as Mahant Ram & Others versus Subhash Chand & Others.

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3. By virtue of judgment and decree dated 10.06.2014, the learned First Appellate Court has allowed the appeal, preferred by the respondents and set aside the judgment and decree dated 01.11.2013, passed by the learned Civil Judge (Junior Division), Court No.3, Ghumarwin, District Bilaspur (hereinafter referred to as the learned trial Court'), in RBT Suit RBT No.403/1 of 2011/08, titled as Subhash Chand & Others versus Mahant Ram & Others.

4. By way of judgment and decree dated 01.11.2013, the learned trial Court has decreed the above suit, by granting the following relief:-

> *"27. In view of the findings on the above issues the suit of the plaintiffs is decreed as they are owners in possession of the suit land by way of adverse possession and revenue entries in favour of the defendants are not valid and liable to be changed as per possession of the plaintiffs and further defendants are restrained from interfering over the suit land measuring 2.7 bighas comprised in khasra No.6 and 100 kitta-2 khata khatoni No.20/37 situated in village Ghumarwin, Pargna Tiun, Tehsil Ghumarwin, District Bilaspur, H.P., in any manner whatsoever. In the particular facts and circumstances of case, the parties are left to bear their own costs. A decree sheet be drawn accordingly. The file after due completion be consigned to record."*

5. **RSA No. 664 of 2015**, has been filed by the appellants, under Section 100 of the CPC, against the judgment

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and decree dated 07.07.2014, passed by the learned First Appellate Court, in Civil Appeal No.65/13 of 2013, titled as Bohra versus Subhash Chand & Others.

6. By way of judgment and decree dated 07.07.2014, the learned First Appellate Court has allowed the appeal preferred by respondent No.1 Bohra and set aside the judgment and decree dated 01.11.2013, passed by the learned trial Court, in RBT Suit RBT No.403/1 of 2011/08, titled as Subhash Chand & Others versus Mahant Ram & Others.

7. For the sake of convenience, parties to the present appeal, are hereinafter referred to, in the same manner, in which, they were referred to, by the learned trial Court.

8. Brief facts, leading to the filing of the present appeal, as borne out from the record, may be summed up, as under:-

8.1. Plaintiffs Subhash Chand and others, have filed a suit, under Sections 34, 35, 36, 37 of the Specific Relief Act, for declaration and Permanent Injunction, to the effect that the plaintiffs are owners-in-possession of land measuring 2-7 bighas, comprised in khasra Nos.6 and 100, kitta-2 khata/khatoni No.20/37 situated in village Ghumarwin, Pargna Tiun, Tehsil Ghumarwin, District Bilaspur, H.P. (hereinafter

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referred to as 'the suit land'), by way of adverse possession and the entries recorded in the revenue record, in the names of defendants are wrong, illegal, null and void, having no effect on the rights, title and interest of the plaintiffs. In addition to this, relief of permanent injunction restraining the defendants from interfering in any manner, whatsoever, by way of changing the nature of land, or not to alienate the suit land, and dispossessing the plaintiffs, in any manner, from the suit land, has also been sought.

8.2. According to the plaintiffs, they are owners-in-possession, of the suit land and the revenue entries in the name of defendants are wrong, illegal, null and void and not binding upon the right, title and interest of the plaintiffs.

8.3. According to the plaintiffs, earlier the suit land was owned and possessed by late Smt Gurdei and Sartaja, and Gurdei executed a Will in favour of late Shri Anant Ram son of Ram Dyal, father of plaintiffs No.1 to 3 and husband of plaintiff No.4,and defendants No.1 to 4.

8.4. As per the plaintiffs, Smt. Sartaju, also executed a Will in favour of defendant No.5. Said Gurdei and Sartaju expired about 48 years ago and Shri Anant Ram, predecessor-in-interest of the plaintiffs took the possession of

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the suit land on 13.1.1960, by forcibly ousting the defendants from the suit land. Since, the said date, the defendants were never allowed to enter in the suit land and they continued to reside at village Badsai, Chunjwani, in Pargna Ajmerpur, Tehsil Ghumarwin, District Bilaspur, which is situated about 25 kilometers from village Ghumarwin.

8.5. According to the plaintiffs, the possession of Shri Anant Ram, predecessor-in-interest of the plaintiff was open, peaceful, hostile uninterrupted and adverse possession during his life time. He expired on 03.03.2005, and thereafter, the plaintiffs are in peaceful, open, hostile, uninterrupted and adverse possession over the suit land.

8.6. It is the further case of the plaintiffs that the predecessor-in-interest of Anant Ram, perfected his title over the suit land on 13.01.1972. The plaintiffs, after the death of Anant Ram, stepped into his shoes and now, they are claiming themselves to be owners-in-possession over the suit land, by way of adverse possession.

8.7. According to the plaintiffs, their cow shed is there, over the suit land and they have spent a huge amount to develop the suit land for the last 48 years. Not only this, they have also planted fruit bearing trees over the suit land.

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8.8. The cause of action is stated to have arisen to the plaintiffs on 27.03.2008, when, the defendants entered into the suit land and threatened that they will dispossess the plaintiffs and also alienate the suit land and will also get the land partitioned, on the basis of wrong illegal entries.

9. On the basis of the above facts, a prayer has been made to decree the suit, as prayed for.

10. When put to notice, the defendants have contested the suit, by filing the written statement, taking the preliminary objections; that the suit of the plaintiffs is not maintainable; the plaintiffs have no cause of action to file the present suit; the plaintiffs have no locus standi to file the present suit; the plaintiffs are estopped to file the present suit by their own acts, conducts, omissions and commissions; the suit is bad for non-joinder and mis-joinder of necessary parties; the suit is barred by limitation; and the suit has not been properly valued for the purpose of Court fee and jurisdiction.

10.1. On merits, the suit has been contested, on the ground, that the revenue entries in the revenue record are correct and valid. According to the defendants, the plaintiffs and defendants are joint owners-in-possession of the suit land.

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10.2. According to the defendants, no Will has been executed by late Smt. Sartaju, as alleged and if the plaintiffs produced any will, then the same is result of fraud and misrepresentation. They have also denied that late Anant Ram, has taken possession on 13.01.1960 and has ousted the defendants, as alleged.

10.3. According to the defendants, they are residents of village Ghhunjwani and Ghumarwin also. They have also disputed the fact that the possession of Anant Ram over the suit land was hostile, open, peaceful, uninterrupted and adverse possession and has allegedly matured into adverse possession on 13.01.1972. Rest of the contents have been denied.

11. On the basis of the above facts, a prayer has been made to dismiss the suit.

12. Plaintiffs have filed replication, denying the preliminary submissions, as well as, the contents of the written statement, by virtue of which, the suit has been contested, by reasserting that of the plaint.

13. From the pleadings of the parties, following issues were framed, by the learned trial Court, vide order dated 03.03.2011:

> *1) Whether the plaintiffs are entitled for decree of declaration to the effect that they are owner in*

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*possession over the suit land by virtue of adverse possession, as alleged? OPP*

2) *Whether the plaintiffs are entitled for the decree of declaration that the revenue entries recorded in the name of defendants are wrong null and void, as alleged? OPP*

3) *Whether the plaintiffs are entitled for decree of permanent prohibitory injunction, as alleged? OPP*

4) *Whether the suit of the plaintiffs is not maintainable in the present form, as alleged? OPD*

5) *Whether the plaintiffs have no cause of action to file the present suit, as alleged? OPD*

6) *Whether the plaintiffs have no locus standi to file the present suit? OPD*

7) *Whether the plaintiffs are estopped to file the present suit by his acts, conduct and deeds, as alleged? OPD*

8) *Whether the suit of the plaintiffs is bad for want of mis-joinder and non-joinder of necessary parties, as alleged? OPD*

9) *Whether the suit of plaintiffs is barred by limitation, as alleged? OPD*

10) *Whether the suit of plaintiffs is not properly valued for the purpose of Court fee and jurisdiction, as alleged? OPD*

11) *Relief.*

14. Thereafter, parties to the lis were directed to adduce evidence.

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15. After closure of the evidence, the learned trial Court, upon hearing learned counsel for the parties, has decreed the suit of the plaintiffs, vide judgment and decree dated 01.11.2013, as referred to above.

16. Feeling aggrieved from the said judgment and decree, defendants No.1 to 4 had preferred the Civil Appeal No.63/13 of 2013, titled as Mahant Ram & Others versus Subhash Chand & Others, which was allowed by the learned First Appellate Court, vide judgment and decree dated 10.06.2014 and suit of the plaintiffs was ordered to be dismissed.

17. Aggrieved from the said judgment and decree, the plaintiffs have been preferred, RSA No. 527 of 2014.

18. The judgment and decree dated 10.06.2014, passed by the learned First Appellate Court has been assailed before this Court, on the ground that the judgment and decree passed by the learned First appellate Court is against the law and facts on the file, as the learned First Appellate Court has failed to appreciate that in the present case, the predecessor-in-interest of the Appellants/Plaintiffs came to be in possession of the suit land on the strength of the Will executed in his favour

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and thereafter, he had perfected his title, on the suit land, till his death, as his possession was peaceful, open and hostile.

17. The findings have further been assailed on the ground that the learned First Appellate Court has not appreciated the pleadings of the parties, in the right perspective.

18. On the basis of the above facts, a prayer has been made to allow the appeal, by setting aside the judgment and decree passed by the learned First Appellate Court and restoring the judgment and decree passed by the learned trial Court.

19. This appeal has been admitted on 06.12.2018, on the following substantial questions of law:-

> *"1. Whether the Ld. Lower Appellate Court being last Court of facts is right in not considering the entire oral as well as documentary evidence in view of law laid down by Hon'ble Apex Court?"*

20. Whereas, defendant No.5-Bohra had also preferred Civil Appeal No.65/13 of 2013, titled as Bohra versus Subhash Chand & Others, which was allowed by the learned First Appellate Court, vide judgment and decree dated 07.07.2014 and suit of the plaintiffs was ordered to be dismissed.

20.1. Aggrieved from the said judgment and decree, the plaintiffs have preferred, RSA No. 664 of 2015, on the same

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grounds, upon which, RSA No.527 of 2014 was preferred and prayed that the appeal may kindly be allowed, by setting aside the judgment and decree passed by the learned First Appellate Court and restoring the judgment and decree passed by the learned trial Court.

21. This appeal has been admitted on 28.12.2015, on the following substantial questions of law:-

> *1) Whether the findings returned by the trial Court can be unsettled by the First Appellate Court without taking into account the pleadings of the parties and entire evidence adduced by the parties?*
>
> *2) Whether the title of the Appellants/Plaintiffs derived from the testamentary document and thereafter perfected by efflux of time can be said to naught on the basis of mere oral evidence?"*

22. In order to decide the controversy, involved in the present appeals, it would be just and appropriate, for this Court, to discuss the oral, as well as, documentary evidence, adduced by the parties, before the learned trial Court.

23. After framing the issues, plaintiffs No.4 Kalashi Devi, appeared in the witness-box, as PW-1, and filed her affidavit Ex. PW-1/A, in which, she asserted that Plaintiffs No.1 to 3 are her sons. They are owners-in-

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possession of the suit land. The revenue entries are wrong. Earlier, the suit land was owned by Gurdei, who has executed a will in favour of her husband Anant Ram and defendants No.1 to 4, whereas, share of Sartaju was bequeathed to defendant No.5, Bohra. Gurdei and Sartaju expired about 50 years ago. Thereafter, defendants had attempted to obtain the possession of the suit land. On 13.01.1960, husband of this witness had ousted them from the suit land and till the day, when she has appeared in the witness-box, defendants are not in possession of the same. Defendants are resident of village Barsai, Funjvani, Pargana Ajmerpur, Tehsil Ghumarwin, which is about 25 kilometers away from Ghumarwin. The possession of her husband remain uninterrupted over the suit land during his lifetime. Her husband expired on 3.3.2005. Thereafter, the plaintiffs are in possession of the suit land. Her husband become owner of the suit land, during his life time on 13.01.1972. As such, she has stated that the revenue entries are wrong. They have constructed a cow shed over a portion of the suit land and also planted fruit bearing trees. On 27.03.2008, the defendants tried to oust them

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forcibly from the suit land, for which, they have no right to do so.

23.1. In the cross-examination, this witness has admitted that the dispute regarding the suit land was decided by High Court. She has feigned ignorance about the fact that defendants No.1 to 4 are brothers of her husband. She has also feigned ignorance about the name of her father-in-law.

24. PW-2 Rattan Lal also deposed about the possession of the plaintiffs over the suit land. In the cross-examination, this witness has deposed that he does not know as to how many brothers and sisters, Anant Ram was having.

25. PW-3 Jagar Nath also deposed on the similar lines, however, in the cross-examination, he has admitted that Anant Ram was father of plaintiffs. He has further admitted that the suit land was inherited by Anant Ram, Mahant Ram, Nand Lal, Nikka Ram and Jeet Ram, after the death of their father. He has also feigned his ignorance about the fact that partition suit is pending before the parties.

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26. To rebut this evidence, defendant No.1, Mahant Ram appeared, in the witness box as DW-1 and filed his affidavit Ex.DW-1/A, disclosing therein that plaintiffs No.1 to 3 are his nephews, whereas, plaintiff No.4, is his sister-in-law. Predecessor-in-interest of the plaintiffs was his real brother. He has asserted his possession over the suit land, along with other co-sharers. He has admitted that his village Barsali is about 25 kilometers away from Ghumarwin. He has admitted that suit land was owned by Gurdei. Voluntarily stated that Ram Dayal was also owner. He has denied that Gurdei had executed a Will in favour of defendant No.5. He has also admitted that some land was owned by Sartaju, but, feigned ignorance about the fact that she had executed a Will in favour of Bohra. He has denied that Anant Ram has obtained possession of the suit land on 13.01.1960. He has admitted that Anant Ram was in possession of the land, without any interruption. He has admitted that the suit land is still in possession of his legal representatives. Firstly, he has admitted that efforts were made to obtain the possession forcibly on 27.03.2008, but, again stated that defendant No.5 had tried to obtain possession forcibly.

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27. So far as the documentary evidence is concerned, Ex.P-1 is Jamabandi, for the year 2000-01, in which, the name of Anant Ram, Nikka Ram, Nikka, Nand Lal, Mahant Ram, Jeet Ram, sons of Ram Dayal and Bohra son of Arjan, are recorded as owners-in-possession of the suit land. This is the entire evidence.

28. The learned trial Court has decreed the suit by declaring the plaintiffs as owners-in-possession of the suit land, by way of adverse possession and also held that the revenue entries in favour of the defendants are not valid and liable to be changed as per possession of the plaintiffs. In addition to this, relief of injunction was also granted to the plaintiffs.

29. Now, this Court would proceed to find out, as to whether the findings recorded by the learned trial Court, have rightly been reversed by the learned First Appellate Court or not.

30. The plaintiffs have filed the suit seeking declaration of their title on the basis of adverse possession, on the basis of revenue record, i.e., Jamabandi for the year 2001-02. As per the said document, in the column of possession, name of Anant Ram, predecessor-in-interest of

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the plaintiffs and defendants No.1 to 4, has been recorded as owner-in-possession.

31. Except this document, no other documentary proof has been placed on record by the plaintiffs, to substantiate that their predecessor-in-interest, Anant Ram had obtained the possession of the suit land by forcibly ousting the defendants from the suit land from the date, i.e., 13.01.1960, till the filing of the suit, i.e., for the period of 48 years. They could not produce any document showing their possession in the revenue record. By way of the present suit, they have objected to the entries in the revenue record as '*Kabza and Kashtkari Swanm*'.

32. The bald stand taken by the plaintiffs, in the pleadings, that too, without any supporting documentary proof, the plea of adverse possession that too, based upon the alleged forcible ouster of the defendants is too short to be accepted as proof of adverse possession over the suit land. Merely, the defendants are not residing in the village, where the suit land is situated and residing about 25 kilometers away from the village, is not sufficient to prove ouster, resulting into the adverse possession.

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33. Law regarding adverse possession has elaborately been discussed by the Hon'ble Supreme Court in ***Karnataka Wakf Board versus Government of India & Others, (2004) 10 Supreme Court Cases, 779.*** Relevant paragraph 11 of the judgment is reproduced as under:-

> *"11. In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. 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. (See S.M. Karim v. Bibi Sakina, Parsinni v. Sukhi and D.N. Venkatarayappa v. State of Karnataka.) 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. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who*

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> *claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession."*
>
> *(Self emphasis supplied)*

34. The plaintiffs, in the present case, have pleaded that the suit land was earlier owned and possessed by Gurdei and Sartaju and said Gurdei and Sartaju have executed a Will in favour of Anant Ram, predecessor-in-interest of the plaintiffs and defendants No.1 to 4, whereas, Sartaju has executed a Will in favour of defendant No.5. Both, Gurdei and Sartaju, died about 48 years back, from the date of filing of the suit and Shri Anant Ram, predecessor-in-interest of the plaintiffs took possession of the suit land on 13.02.1960, by forcibly ousting the defendants from the suit land.

35. Meaning thereby, the ouster of the defendants has been sought on the basis of the alleged Will executed by Gurdei in favour of plaintiffs and defendants

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No.1 to 4 and by Sartaju, in favour of defendant No.5. This fact has specifically been denied by the defendants, in the written statement and they have also mentioned that if the plaintiffs produced any Will, the same is result of fraud and misrepresentation. The inception of possession is permissive in nature, on the basis of Will, which, as per the case set up by plaintiffs, was in favour of the parties to the *lis*.

36. The very execution of the Wills by Sartaju and Gurdei has been disputed and controverted by the defendants. As stated above, when a person has taken a plea of adverse possession, it is his duty to plead and establish all necessary facts, as he is asserting a hostile title against the true owners.

37. When, the very base of the suit is the two Wills, allegedly executed by Gurdei and Sartaju, then, it was incumbent upon the plaintiffs to assert all these material facts to demonstrate that the property was earlier owned and possessed by Gurdei and Sartaju and on the basis of the Wills, executed by said Gurdei and Sartaju, the same has been inherited by the parties to the *lis*.

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38. Even, in the replication, nothing has been asserted about the Wills allegedly executed by Sartaju and Gurdei. The parties to the lis are not strangers, but, co-sharers in the suit land. Possession of one co-sharer is possession of all the co-sharers.

39. When, there is no documentary proof, with regard to the fact that the suit land was earlier owned and possessed by Gurdei and Sartaju, then, the question of execution of Wills, in favour of the parties to the lis, does not arise. The pleadings are totally silent about the fact that as to what occasion prompted Anant Ram, predecessor-in-interest of the plaintiffs, to forcibly oust the defendants from the suit land.

40. The admission of defendant No.1, qua the fact that the suit land was earlier owned and possessed by Gurdei and Sartaju, is too short to give an occasion to the plaintiffs or their predecessor-in-interest to set up a claim of adverse possession. Situation would have been otherwise, had the the adverse possession been claimed by predecessor-in-interest of the plaintiffs, prior to the alleged execution of Wills, by Gurdei and Sartaju.

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41. Here, the claim of the plaintiffs, qua the fact that their predecessor-in-interest has forcibly ousted the defendants from the suit land on 13.01.1960, is not liable to be accepted, as the suit is silent about the fact that prior to execution of Will, who were in possession and when Gurdei and Sartaju had expired, as, Will is a document, which will come into operation, after the death of testator.

42. It is not the case of the plaintiffs that their predecessor-in-interest was not having any right title and interest in the suit property and he has ousted the defendants from the same, whereas, according to the stand taken by the plaintiffs, on the basis of the alleged Wills, executed in favour of the parties to the lis, their predecessor-in-interest had forcibly ousted the defendants from the suit land.

43. Even if it is assumed that the Wills were executed in favour of the parties to the lis, then, the plaintiffs would become co-owners and possession of one co-owner, is possession of all the co-owners. It is not the case of the plaintiffs that a specific portion of the land was bequeathed to the parties to the lis and that apart from

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their specific share, their predecessor-in-interest had entered into possession of the land, which was bequeathed, in favour of the parties to the lis, by Gurdei and Sartaju.

44. Another fact, which has allegedly been highlighted by learned counsel for the defendants is that a cow shed of the plaintiffs exists over the suit land and they have also planted fruit bearing trees in the suit land, whereas, the revenue record is totally silent about the said fact. In the revenue record, the type of land has been mentioned as 'Banjar Kadeem', 'Gair Mumkin Beed' and 'Kohali'. Parties to the lis are proved to be co-sharers and the property is not partitioned.

45. As per the revenue record, relied upon, the suit land has been recorded in joint ownership and possession of the parties to the lis and the plaintiffs have taken a contrary plea to the said revenue record that their predecessor-in-interest, Anant Ram, took the possession of the suit land on 13.10.1960, by forcibly ousting the defendants from the suit land. As such, the very inception of the possession of the plaintiffs or their predecessor-in-interest, cannot be said to be peaceful, because, term 'forcible' is converse to the term 'peaceful'.

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46. It is not in dispute that the parties to the *lis* are co-owners. The Hon'ble Supreme Court in a ***Des Raj & Others versus Bhagat Ram (dead) by LRs & Others, (2007) 9 Supreme Court Cases 641,*** has explained the ingredients for establishing the ouster of a co-sharer. Relevant paragraphs 20 to 22 of the judgment, is reproduced, as under:-

> *20. A plea of adverse possession or a plea of ouster would indisputably be governed by Articles 64 and 65 of the Limitation Act.*
>
> *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-`-vis his co- owners and they were in know thereof.*
>
> *22. Mere assertion of title by itself may not be sufficient unless the plaintiff proves animus possidendi. But the intention on the part of the plaintiff to possess the properties in suit exclusively and not for and on behalf of other co-owners also is evident from the fact that the defendants appellants themselves had earlier filed two suits. Such suits were filed for partition. In those suits the defendants appellants claimed themselves to be co-owners of the plaintiff. A bare perusal of the judgments of the courts below clearly demonstrates that the plaintiff had even therein asserted hostile title claiming ownership in himself. The claim of hostile title by the plaintiff over the suit land, therefore, was, thus, known to the*

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> *appellants. They allowed the first suit to be dismissed in the year 1977. Another suit was filed in the year 1978 which again was dismissed in the year 1984. It may be true, as has been contended on behalf of the appellants before the courts below, that a co-owner can bring about successive suits for partition as the cause of action therefor would be continuous one. But, it is equally well-settled that pendency of a suit does not stop running of 'limitation'. The very fact that the defendants despite the purported entry made in the revenue settlement record of rights in the year 1953 allowed the plaintiff to possess the same exclusively and had not succeeded in their attempt to possess the properties in Village Samleu and/or otherwise enjoy the usufruct thereof, clearly go to show that even prior to institution of the said suit the plaintiff-respondent had been in hostile possession thereof.*

47. If the facts and circumstances of the present case, are seen in the light of the decision of the Hon'ble Supreme Court in ***Des Raj***'s case supra, the revenue entries are in the name of the parties to the lis, as co-sharers, as such, the alleged forcible ouster, which is also anti-thesis to the concept of adverse possession, is fatal to the case of the plaintiffs.

48. In ***Ravinder Kaur Grewal*** *versus* ***Manjit Kaur, AIR 2019 Supreme Court 3827,*** the Hon'ble Supreme Court has elaborately discussed the principle

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governing the plea of adverse possession. Relevant paragraph 57 of the judgment, is reproduced, as under:-

> *57. 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., adequate 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 synonym 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 the large 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.*

49. In the present case, the learned trial Court has swayed away with the fact that the plaintiffs have pleaded the date, when their predecessor-in-interest had forcibly ousted the defendants, as 13.01.1960, which, even, has not been supported by any documentary proof, nor, in the revenue record, such fact of exclusive possession of

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predecessor-in-interest of the plaintiffs has been recorded and thus, wrongly decreed the suit.

50. The findings of the learned trial Court fall within the definition of 'perverse findings', as, the material fact has been ignored that the alleged Wills have not seen the light of the day, till date, and the bald plea of claiming ownership, on the basis of the Will, has been accepted, as gospel truth, as a plea of execution of the Wills, by Gurdei and Sartaju has specifically been denied by the defendants.

51. Except the pleadings, there is nothing on record to demonstrate the alleged possession of the plaintiffs upon the suit property from 13.01.1960. Moreover, the alleged act of the predecessor-in-interest of the plaintiffs to forcibly ousting the defendants, is fatal to the case of the plaintiffs.

52. The revenue record, as relied upon by the plaintiffs, contains entries in favour of the parties to the lis, as joint owners-in-possession, although, those entries are rebuttable one. Presumption has been attached to the revenue entries. The bald statement of PW-1 is too short to rebut the said presumption, as, the said witness has simply

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stated that the plaintiffs are owners-in-possession of the suit land.

53. In the absence of any documentary proof, to support the bald assertion, the learned trial Court has fallen into error by decreeing the suit. Hence, this Court has no legal hesitation to hold that the findings recorded by the learned trial Court below, has rightly been reversed by the learned First Appellate Court.

54. In view of the discussion made above, there is no occasion for this Court to interfere in the well reasoned judgment passed by the learned First Appellate Court. The substantial questions of law, are decided against the appellants.

55. Accordingly, both the appeals are dismissed and the judgment and decree passed by the learned First Appellate Court, is upheld. Consequently the suit of the plaintiffs is ordered to be dismissed.

56. Pending application(s), if any, are also disposed of. Record be sent back.

**(Virender Singh)**
**Judge**

**August 18, 2026** *(ps)*

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