

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

2026:PHHC:080476



**Regular Second Appeal No. 4001 of 2006 (O&M)**

**Reserved on : 19.05.2026**

**Pronounced on : 22.05.2026**

Ranbir Singh and others

.....Appellants

versus

Haryana State through Collector, Fatehabad

.....Respondent

**CORAM: HON'BLE MRS. JUSTICE RAMESH KUMARI**

Present: Mr. Kshitij Sharma, Senior Advocate (through v.c.) with  
Mr. Tammna Banwala, Advocate, for the appellants.

Mr. Rahul Gupta, Assistant Advocate General, Haryana.

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**RAMESH KUMARI, J.**

1. This appeal in hand arises from the judgment and decree dated 18.09.2006 passed by the Court of learned District Judge, Fatehabad whereby the first appeal filed by the appellants herein (original plaintiffs) came to be dismissed thereby affirming the judgment and decree dated 17.04.2006 passed by the learned trial Court in Civil Suit No. 316-C of 2004 seeking possession of the suit property.

2. The facts giving rise to this regular second appeal are as under:-

The claim of the plaintiffs is that they are the owners in possession of land measuring 119 Kanals comprised in Khasra Nos. 16//24/1 (013), 32//1(6-18), 2(5-16), 3(5-0), 4(5-0), 7(8-0), 8(8-0), 9(8-0), 10(8-0), 11(8-0), 12(8-0), 13(8-0), 14(8-0), 33//4(8-0), 5(7-13), 6(8-0), 7(8-0), Kittas 17, situated in village Banmandori, Tehsil and District Fatehabad, as per Jamabandi Ex.P2 for the year 2000-2001. The Banmandori Distributary passes through a part of this land and is under the control of defendant/respondent No.2. Initially, this distributary was *kacha* but subsequently it had been cemented in Khasra Nos. 16//24/2, 33//4, 5, 32//1,2,3,4, measuring 7 Kanals owned by the plaintiffs and the said act was done forcibly and illegally. The property was never acquired by the defendants and the defendants are in illegal possession of the suit property. The plaintiffs got the property demarcated and it was found vide demarcation report Ex.P5 submitted by Pardeep Kumar, Field Kanungo, PW2 that the defendants are in illegal possession over this property. The plaintiffs were never paid any compensation by the defendants for taking possession of this land. In spite of service of notice Ex.P3 vide postal receipt Ex.P4, the defendants failed to deliver the possession to the plaintiffs which necessitated the filing of the suit.

3. Defendants-respondents in their written statement contested the suit by raising preliminary objections regarding its maintainability and that the plaintiffs have no locus standi or cause of action to file the suit and they were estopped from filing the suit by their own acts and conduct. The case of the defendants is that the distributary was constructed in the presence of all the shareholders. At the time of cementing the distributary, none of the plaintiffs or anyone else raised any objection. The plaintiffs and other shareholders are beneficiaries as their land is being irrigated through the said distributary for more than 50 years.

This fact was well within the knowledge of the plaintiffs. The distributary was in existence prior to the consolidation in the year 1960. The distributary had been cemented in the year 1981-82 and again 2-3 years ago, its level was raised up to one foot. No other alterations were ever made. The earth work was done on the old embankment and no additional construction was raised. The defendants have become owners of the suit property by way of adverse possession as their possession was hostile and without any payment of charges and to the knowledge of the plaintiffs and without interruption. These facts were concealed by the plaintiffs and therefore, the suit was liable to be dismissed as the Civil Court had no jurisdiction to entertain and try the suit.

4. No replication to the written statement was filed by the plaintiffs.
5. Learned trial Court framed the following issues vide order dated 31.01.2005:-
  1. Whether the plaintiffs are entitled to possession of the suit property as prayed, if so its effect? OPP
  2. If issue No.1 is proved, whether the defendants can be restrained from using the portion of Banmandori distributary passing through the suit property? OPP.
  3. Whether the suit is within time? OPP
  4. Whether the defendants have become owners of the suit property by way of the adverse possession? OPD
  5. Whether the suit is false and frivolous and liable to be dismissed as such? OPD.
  6. Relief.
6. In order to prove their case, the plaintiffs examined their power of attorney Jai Singh as PW1 besides the testimony of Pardeep Kumar, Field Kanungo as PW2. The plaintiffs also tendered in evidence the documents i.e. power of attorney dated 07.12.1999 Ex.P1, Jamabandi for the year 2000-2001 as Ex.P2, notice dated 19.05.2004 as Ex.P3, postal receipt as Ex.P4, Demarcation report as Ex.P5 and application dated 25.11.2003 for getting the property demarcated

as Ex.P6. On the other hand, the defendants examined Ram Partap Singh, SDO as DW1 and tendered in evidence demarcation reports Marks-A & B.

7. Learned trial Court vide impugned judgment dated 17.04.2006 held that the plaintiffs were owners of the suit property and that no compensation was paid to them by the defendants, because the plaintiffs or their predecessors in interest did not raise any objection when the distributary was initially carved out and thereafter they cannot take the plea that defendants had cemented the distributary. Learned trial Court held that the existence of the distributary is in the interest of general public and whimsical pleas of the plaintiffs cannot form the basis for depriving the other share holders and beneficiaries for the use distributary and the learned trial Court dismissed the suit of the plaintiffs by observing that:-

*“Once the plaintiffs or their predecessor in interest did not raise any objection at the time when the distributary was initially carved out, they cannot now take the plea that the defendants have cemented the distributary. The existence of the distributary is in general public interest and the whimsical pleas of the plaintiffs cannot form the basis for depriving the other share holders and beneficiary of the use of the distributary, if at all, the plaintiffs were aggrieved by the distributary, then they should have protested at the time when they have initially decided to construct the distributary at the spot. The distributary has been in existence for save decade and as per the own admission of the plaintiffs, it has been cemented and made pucca also for the past at least 20 years. This being so, the plaintiffs have no right to challenge its existence now. The admission made by Jai Singh regarding the fact that the distributary has been made pucca for the past almost 20 years also shows that the plaintiffs had deliberately taken a false stand in their pleadings when they claimed that the defendants were now trying to cement the distributary.”*

8. Learned trial Court also held that the suit is barred by limitation because challenge to the existence of distributary should have been made within time from the date when the distributary was constructed and that suit is false and frivolous in nature.

9. Learned First Appellate Court dismissed the appeal by observing :-

*“So admittedly, the respondents are in possession of the suit land since the year 1960. The possession of the respondents is open, continuous and is hostile to the title of the real owners to their knowledge as well as knowledge to the entire world. The appellants had been seeing the construction of the canal at the time it was dug. The appellants had been seeing the brick lining on the said canal and they had been seeing the remodeling of it. No objection was raised at the time, the distributary was dug for the first time in the year 1960. In these circumstances, to my mind, the respondents have become owners of the suit land by way of adverse possession. So the respondents cannot be restrained from suing the said land for the purpose it is being used and the suit is not within limitation”.*

10. This appeal was admitted for determination of the following substantial questions of law: -

1. *Whether the respondents could take away the land of the appellants for making the distributary pucca, without acquiring the same and without making any payments of the said land to the appellants?*
2. *Whether the land of the appellants could be encroached upon or taken away by the respondents without any notice or by making the payments of the said land?*
3. *Whether any limitation applies to a suit for possession based on title?*

11. I have heard learned counsel for the parties, appraised the paper book as well as records of the courts below with their able assistance.

12. Learned counsel for the parties have also submitted their written submissions in support of their contentions.
13. Learned counsel for the plaintiffs has submitted that the plaintiffs are owners in possession of the land measuring 119 Kanals. Banamdaori distributary passes through seven Kanals of land bearing Khasra Nos. 16//24/2, 33//4, 5, 32//1,2,3,4 owned by the plaintiffs. Initially the aforesaid distributary was *kacha* but subsequently it was cemented in the above mentioned Khasra numbers. The suit property was never acquired and the defendants are in illegal possession of the same to the extent of seven Kanals. The demarcation was conducted by PW2 Pardeep Kumar, Field Kanungo, and he duly proved the demarcation report Ex.P5. No compensation was paid by the defendants to the plaintiffs for use of their land for constructing the distributary. Learned trial Court and First Appellate Court have not appreciated the fact that defendants cannot claim adverse possession over the suit property. The learned trial Court and First Appellate Court erroneously held that suit is time barred. In support of his contention learned counsel for the plaintiffs has relied upon the following decisions rendered by this Court as well as of the Apex Court:-
- i) State of Haryana versus Mukesh Kumar*  
*2012(1) RCR (Civil) 17;*
  - ii) Pradyumna Mukand Kokil vs. State of Maharashtra,*  
*2015(6) SCC 406;*
  - iii) Vidya Devi vs. State of Himachal Pradesh 2020(2) SCC 569;*
  - iv) State of Haryana vs. Amin Lal 2024 INSC 875;*
14. Learned State counsel appearing for the defendants has submitted that the learned trial Court as well as the learned First Appellate Court rightly observed that possession of the defendants is open, continuous and hostile to the title of the real owners to their knowledge as well as to the knowledge of the entire world. No objection was raised at the time when the distributary was dug for

the first time in the year 1960. Under these circumstances, the defendants became owners of the suit land by way of adverse possession and the defendants cannot be restrained from using the said land for the purpose it is being used and the suit is not within limitation. Learned State counsel also contended that the suit is barred by limitation because same is filed after 44 years after the construction of distributary. The construction of distributary is for public purpose to provide better irrigation facilities to the agriculturists of the area. The distributary serves large number of farmers by providing water for irrigation of their land. No objection was raised by the predecessors in interest of the plaintiffs at the time of construction of the distributary. The silence of the landowners for decades clearly established their acquiescence. The distributary has been in existence since 1960 and because the defendants have become owners by way of adverse possession, they cannot claim possession. The plaintiffs themselves failed to step into the witness box and only examined their power of attorney PW1 Jai Singh who claims to be the father of the plaintiffs. Learned State counsel prayed for dismissal of the appeal. In support of their contention, learned State counsel also placed reliance upon a judgment of this Court dated 16.03.2020 passed in RSA No. 1631-2017 titled as *Narinder Kumar vs. State of Haryana through Executive Engineer*.

15. In the light of these facts and the abovesaid position, substantial questions No.1 and 2 framed by this Court are taken up together.
16. The facts of the case are undisputed. The plaintiffs are the undisputed owners of the suit property as per Jamabandi for the year 2001-02 (Ex. P2). To prove averments of the plaint, the plaintiffs got examined their power of attorney Jai Singh as PW1 who also tendered in his evidence Power of Attorney as Ex.P1. Since the power of attorney PW1 Jai Singh is conversant with the facts of the

case being their father and much of the facts are not disputed, therefore, his testimony as attorney of the plaintiffs can be read against the defendants. Another fact which is undisputed is that Banmandori distributary passes through 7 Kanals of land bearing Khasra Nos.16//24/2, 33//4, 5, 32//1,2,3,4, owned by the plaintiffs which is also further corroborated with the demarcation report Ex.P5 proved on record by PW2 Pardeep Kumar, Field Kanungo. The case of the plaintiffs is that the land in question was encroached when the distributary was brick lined/cemented whereas case of the defendants is that the distributary is in existence since 1960 and it was brick lined/cemented later on. The fact remains that 7 Kanals of land owned by the plaintiffs is being used for running the distributary. The water from the distributary has been used to irrigate the fields of agriculturists including the plaintiffs and other land owners. Suit property i.e. 7 Kanals of land of plaintiffs was never acquired and no compensation was ever paid to the plaintiffs, being land owners, either at the time of initial carving out of distributary or at the time of its brick-lining. The claim of the defendants is that they have become owners of the suit property being in hostile adverse possession and that the suit is barred by time.

17. Regarding the meaning of adverse possession, Hon'ble Apex Court in

***T. Anjanappa v. Somalingappa, (2006) 7 SCC 570*** held as follows: -

*“14. ... Adverse possession means a [hostile possession] which is expressly or impliedly in denial of title of the true owner.....”*

*xx xx xx xx xx*

**16.** *Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of any person to whom the land rightfully belongs and tends to extinguish that person's title, which provides that no person shall make an entry or distress, or bring an action to recover any land or rent, but within twelve years next*

*after the time when the right first accrued, and does away with the doctrine of adverse possession, except in the cases provided for by Section 15. Possession is not held to be adverse if it can be referred to a lawful title.*

**17.** *According to Pollock, “In common speech a man is said to be in possession of anything of which he has the apparent control or from the use of which he has the apparent powers of excluding others”.*

**18.** *It is the basic principle of law of adverse possession that (a) it is the temporary and abnormal separation of the property from the title of it when a man holds property innocently against all the world but wrongfully against the true owner; (b) it is possession inconsistent with the title of the true owner.*

**19.** *In Halsbury's Laws of England, 1953 Edn., Vol. I it has been stated as follows:*

*“At the determination of the statutory period limited to any person for making an entry or bringing an action, the right or title of such person to the land, rent or advowson, for the recovery of which such entry or action might have been made or brought within such period is extinguished and such title cannot afterwards be reviewed either by re-entry or by subsequent acknowledgment. The operation of the statute is merely negative, it extinguishes the right and title of the dispossessed owner and leaves the occupant with a title gained by the fact of possession and resting on the infirmity of the right of the others to eject him.”*

**20.** *It is well-recognised proposition in law that mere possession however long does not necessarily mean that it is adverse to the true owner. Adverse possession really means the hostile possession which is expressly or impliedly in denial of title of the true owner and in order to constitute adverse possession the possession proved must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The classical requirements of acquisition of title by adverse possession are that such possession in denial of the true owner's title*

*must be peaceful, open and continuous. The possession must be open and hostile enough to be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action."*

18. The basic ingredient to invoke the plea of adverse possession is the hostile possession in denial of title of the legal owner of land. The moot point is whether the State can take the plea of adverse possession. In ***Narinder Kumar's case (supra)***, this Court observed that in a suit for possession filed against the State, the claim can be defeated only on the ground that it was barred by limitation. In this case the State Government constructed a pucca road from village A to village B in the year 1975-76 and in the year 2012 two suits were filed by the landowners for possession, mandatory injunction and permanent injunction and it was held that if road laid without consent of landowners. The possession of the State was open, hostile and known to everyone and possession of the State which was adverse to owners known to them in 1975-76 itself. The suit filed by the plaintiffs was held to be barred by limitation and under Article 65 of the Limitation Act the limitation for filing a suit on the basis of title claiming possession is 12 years from the date when plaintiff comes to know of adverse possession.
19. The judgment in ***Narinder Kumar's case*** cannot be applied to the facts of the present case in view of settled position of law in a catena of judgments by the Apex Court wherein a contrary view had been taken. In ***State of Haryana vs. Mukesh Kumar (supra)*** it had been held that right to property is now considered to be not only a constitutional or statutory right but also a human right.

20 In *Pradyumna Mukund Kokil's case (supra)*, Hon'ble Apex Court observed that it was not fair on the part of the High Court to permit respondent No.3-Municipality to raise a plea with regard to adverse possession.

21. In *Vidya Devi's (supra)*, it is observed as under:-

**“12.2.** *The right to property ceased to be a fundamental right by the Constitution (Forty-Fourth Amendment) Act, 1978, however, it continued to be a human right [Tukaram Kana Joshi v. MIDC, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] in a welfare State, and a constitutional right under Article 300-A of the Constitution. Article 300-A provides that no person shall be deprived of his property save by authority of law. The State cannot dispossess a citizen of his property except in accordance with the procedure established by law. The obligation to pay compensation, though not expressly included in Article 300-A, can be inferred in that Article. [K.T. Plantation (P) Ltd. v. State of Karnataka, (2011) 9 SCC 1 : (2011) 4 SCC (Civ) 414]*

**12.3.** To forcibly dispossess a person of his private property, without following due process of law, would be violative of a human right, as also the constitutional right under Article 300-A of the Constitution. Reliance is placed on the judgment in *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai [Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai, (2005) 7 SCC 627]* , wherein this Court held that: (SCC p. 634, para 6)

“6. ... Having regard to the provisions contained in Article 300-A of the Constitution, the State in exercise of its power of “eminent domain” may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and *reasonable compensation therefor must be paid.*”

**12.4.** In *N. Padmamma v. S. Ramakrishna Reddy [N. Padmamma v. S. Ramakrishna Reddy, (2008) 15 SCC 517]*, this Court held that: (SCC p. 526, para 21)

“21. *If the right of property is a human right as also a constitutional right, the same cannot be taken away except in accordance with law. Article*

300-A of the Constitution protects such right. The provisions of the Act seeking to divest such right, keeping in view of *the provisions of Article 300-A of the Constitution of India, must be strictly construed.*”

**12.5.** In *Delhi Airtech Services (P) Ltd. v. State of U.P.* [*Delhi Airtech Services (P) Ltd. v. State of U.P.*, (2011) 9 SCC 354: (2011) 4 SCC (Civ) 673], this Court recognised the right to property as a basic human right in the following words: (SCC p. 379, para 30)

*“30. It is accepted in every jurisprudence and by different political thinkers that some amount of property right is an indispensable safeguard against tyranny and economic oppression of the Government. Jefferson was of the view that liberty cannot long subsist without the support of property. “Property must be secured, else liberty cannot subsist” was the opinion of John Adams. Indeed the view that property itself is the seed-bed which must be conserved if other constitutional values are to flourish, is the consensus among political thinkers and jurists.”*

**12.6.** In *Jilubhai Nanbhai Khachar v. State of Gujarat* [*Jilubhai Nanbhai Khachar v. State of Gujarat*, 1995 Supp (1) SCC 596], this Court held as follows: (SCC p. 627, para 48)

*“48. ... In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation.”*

22. In *Amin Lal’s case (supra)*, the plaintiffs filed a suit for possession of their land measuring 18 Biswas which was in possession of the State of Haryana without payment of compensation to the plaintiffs. The suit was decreed by the trial Court and the plea of the State that they had become owners by way of

adverse possession as their possession was continuous, open and hostile, and without payment of any rent, was rejected by the trial Court. The first appeal filed by the State of Haryana was accepted by the First Appellate Court and the second regular appeal filed by the plaintiffs was accepted by this Court in RSA No. 3818 of 1987 decided on 31.01.2019. The appeal filed by the State of Haryana was dismissed by the Hon'ble Apex Court vide judgment dated 19.11.2024. Hon'ble Apex Court referred to the judgments rendered in Vidya Devi's and Mukesh Kumar's cases (supra) and held as under:-

*“12.10. This Court in [State of Haryana v. Mukesh Kumar](#), (2011) 10 SCC 404: held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multi-faceted dimension.*

*12.11. We are surprised by the plea taken by the State before the High Court, that since it has been in continuous possession of the land for over 42 years, it would tantamount to “adverse” possession. The State being a welfare State, cannot be permitted to take the plea of adverse possession, which allows a trespasser i.e. a person guilty of a tort, or even a crime, to gain legal title over such property for over 12 years. The State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its own citizens, as has been done in the present case.”*

23. In view of above referred judgments, only conclusion that can be drawn is that, the State being a ‘welfare State’, is expected to protect the life, liberty and property of its citizens. The State cannot be permitted to become a ‘squatter’ over the lawful possessory and ownership rights of its citizens. The State can neither be permitted to perfect its possessory rights into ownership title over the land to grab the property of its own citizens. The State cannot take away the land for carving out distributary or for making it *pucca* by brick/cement

lining without acquiring its possession in due process of law. The State is expected to make payment to lawful owners of the land as compensation. The State cannot encroach upon or take away the possession of the land owned by the plaintiffs without any notice or without making compensation of the said land, which in the present case is being used for running of distributary for irrigation purposes to the landholders. As the State cannot be permitted to perfect its title over the suit property by invoking the principle of adverse possession, for this reason the learned trial Court and first Appellate Court erred in holding that the defendants have become owners of suit property by adverse possession and that the suit is filed beyond period of limitation of 12 years, thereby is barred under Article 65 of the Limitation Act. The findings of the learned trial Court and First Appellate Court are not based on proper appreciation of law in its rightful prospect.

24. In view of above discussion, the substantial questions of law framed in this case are answered as under:-

- i) The defendants took away the land of the plaintiffs for making the distributary pucca without acquiring the same and without making any payments of the said land to the plaintiffs.
- ii) Since no payment is made to the landowners/plaintiffs qua 7 Kanals of land, their land is encroached upon without any notice and without making any payment of the said land.
- iii) No period of limitation applied to a suit for possession based on title when the land is in illegal possession of the State.

25. As a sequel of above discussion, the appeal in hand deserves to be allowed. The judgments of the learned trial Court as well as of the First Appellate Court are set aside.
26. As the part of distributary is running over the suit property since 1960 or thereafter, and the said act of the State of carving out the distributary cannot be undone for the larger interest of agriculturists of land, therefore, in the fitness of things, **appeal is partly allowed**. The State/defendants are directed to make compensation at fair market price of the suit property measuring 7 Kanals bearing Khasra Nos. 16//24/2, 33//4, 5, 32//1,2,3,4, situated in village Banmandori, Tehsil and District Fatehabad, as per Jamabandi Ex.P2 to the plaintiffs regarding use of this land along with all statutory benefits including solatium, interest etc. within a period of three months from today by treating it as a case of “deemed acquisition”.
27. Decree be prepared. A copy of this judgment be forwarded to the quarters concerned. Miscellaneous applications, if any, also stand disposed of.

**(RAMESH KUMARI)**  
**JUDGE**

**22.05.2026**

ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No