

RSA-1953-2015

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

RSA-1953-2015 (O & M)

Date of Decision: 02.02.2017

Ibrahim

... Appellant

Versus

General Public and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Rajesh Bhateja, Advocate,
for the appellant.

SNEH PRASHAR, J.

CM-5162-C-2015

The present application under Section 5 of the Limitation Act has been filed for condonation of delay of 28 days in filing the appeal.

For the reasons enumerated in the application, the same is allowed and the delay is condoned subject to all just exceptions.

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The instant appeal had been filed by appellant-plaintiff, Ibrahim (hereinafter referred to as the “appellant”) assailing the judgment and decree dated 04.07.2014 passed by learned Additional District Judge, Mewat dismissing the appeal filed against judgment and decree dated 31.01.2013 passed in Civil Suit No.42/24.02.2012 by learned Civil Judge (Jr. Divn.), Ferozepur Jhirka, by virtue of which suit

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for declaration filed by him (appellant) against respondents-defendants, General Public and another (hereinafter referred to as the “respondents”) was dismissed.

Briefly, the facts are that the appellant filed a suit for declaration to the effect that his correct date of birth is 15.01.1949 and his date of birth recorded in the record of Govt. Primary School of village Hirwari and Govt. Senior Secondary School, Ferozepur Jhirka as 21.01.1956 at Sr. No.46/1997 are wrong, illegal and liable to be corrected.

The appellant pleaded that he is son of Gafoor and his date of birth is 15.01.1949. Gafoor and Mohammadi had four sons and five daughters. He is the eldest son of Gafoor and his younger brother Sattar was born on 10.07.1953. His date of birth could not be entered in the register of the chowkidar and in the record of Registrar (Birth and Death). He was got admitted in Government Primary School of village Hirwari and later on in Government Senior Secondary School, Ferozepur Jhirka, where his date of birth was wrongly recorded as 21.01.1956. Since his father had not accompanied at the time of his admission in the school, his date of birth was recorded by the concerned teacher as 21.01.1956 instead of 15.01.1949. He moved a request to respondent No.2-Registrar (Births and Deaths)/ Chief Medical Officer, Al Afia General Hospital, Mandikhera, Tehsil Ferozepur Jhirka to supply the copy of his birth certificate, but he issued a certificate of non-availability of the record of his date of birth. He requested respondent No.2 to

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correct the record of his date of birth in the register maintained by Health Department as 15.01.1949, but to no avail.

On notice, respondent No.2 appeared and contested the suit. He filed a written statement submitting that the appellant himself had not got entered his name in the register maintained by Chowkidar of the concerned village, which is mandatory as per the provisions of Birth and Death rules and regulations. The record of his date of birth was also not found in the office of Registrar (Births & Deaths) and consequently, a non-availability certificate was issued by respondent No.2 to the appellant. Respondent No.2 further pleaded that the appellant never approached Registrar (Births & Deaths) in order to get entered his date of birth.

However, none appeared on behalf of respondent No.1, therefore, proceeded against *ex parte*.

On the rival contentions of the parties, issues were framed.

Both the parties adduced evidence in support of their rival contentions.

Considering the ocular and documentary evidence produced by the parties and the submissions made on their behalf, learned trial Court dismissed the suit of the appellant vide impugned judgment dated 31.01.2013.

Appellant preferred an appeal against the judgment and decree dated 31.01.2013, which was dismissed by learned Additional District Judge, Mewat vide judgment and decree dated 04.07.2014.

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Feeling aggrieved, the appellant filed the instant regular second appeal.

The submissions made by Mr. Rajesh Bhateja, Advocate representing the appellant have been considered.

Learned counsel for the appellant argued with vehemence that the correct date of birth of the appellant is 15.1.1949 whereas learned trial Court as well as First Appellate Court ignoring the affidavits Ex.PW1/A and Ex.PW2/A of PW1 Ramjan and PW2 Akbari, tendered in evidence dismissed the suit. Learned counsel further submitted that date of birth of the appellant has been wrongly recorded as 21.01.1956 in the register of Govt. Primary School, Hirwari. His date of birth was recorded on random basis and on physical appearance and not on the basis of any substantive document. Both the courts below did not consider the birth certificates of Juhurbi and Sattar, sister and brother of the appellant, who were younger to him and their dates of birth were shown as 20.01.1956 and 10.07.1953, respectively.

The onus to prove the fact that his date of birth is 15.01.1949 instead of 21.01.1956 as has been shown in the record of Govt. Primary School of village Hirwari as well as Govt. Senior Secondary School, Ferozepur, was on the appellant. As per the birth and death regulations, father of the plaintiff was duty bound to intimate birth of the appellant to the chowkidar of the village. On the basis of the entry made in the register of the chowkidar, the date of birth of a child is entered in the record/register maintained in the office of the Registrar

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(Births and Deaths)/Civil Surgeon. However, in the instant case, there is no record available regarding the date of birth of the appellant. Except for ocular testimony of PW1 Ramjan and PW2 Akbari, no cogent and reliable evidence could be led by the appellant to prove his version. Moreover, the date of birth of his sister Juhurbi is recorded as 20.01.1956 in the birth certificate issued by the Registrar (Births & Deaths), whereas date of birth of the appellant in the school leaving certificate Ex.P2 is recorded as 21.1.1956. Indeed, the discrepancy is evident at the face of it but that is not enough to assume the date of birth stated by the appellant to be correct.

The appellant got admitted in the Govt. Primary School, Hirwari in the month of May, 1963 and his date of birth in the admission register Ex.PW 4/A was shown as 21.01.1956. When he took admission in Government Senior Secondary School, the same date of birth was registered. At no point of time the appellant opted to pursue the remedy available to him to get corrected his date of birth within the time permissible as per the birth and death regulations. He filed the present suit on 24.02.2012, which is hopelessly barred by limitation, which is three years for claiming a relief of declaration. It would not lie in the mouth of the appellant to say that he had come to know about the date of birth recorded in his educational certificates after almost 45 years.

In addition to the above, the appellant did not implead the State of Haryana, who was a necessary party to the suit. Therefore, the

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suit was also bad for non-joinder of necessary parties.

Resultantly, there being no merit in the present appeal, the same is dismissed in limine.

02.02.2017
gsv

(SNEH PRASHER)
JUDGE

Note:	Whether speaking/reasoned	:	Yes / No
	Whether reportable	:	Yes / No