

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

**RSA-5526-2018 (O&M)**  
**Date of decision : 13.02.2023**

Kela Bai (deceased) through LR ... Appellant(s)

Versus

Mahabir Parsad Mittal & Ors. ... Respondent(s)

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Mr. Gaurav Singla, Advocate for the appellant.

**ALKA SARIN, J. (ORAL)**

**CM-15242-C-2018**

This is an application for condonation of delay of 109 days in refiling the appeal.

For the reasons stated in the application, delay of 109 days in refiling the appeal is condoned. CM stands disposed off.

**RSA-5526-2018**

The present appeal has been preferred against the concurrent findings of fact returned by both the Courts below.

The brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit seeking a declaration that the plaintiff-appellant was the single lawful owner of six fixed deposits mentioned in para 6 of the plaint and adding of the name of defendant-respondent No.1 as a co-owner was illegal, null and void and ineffective qua the rights of the plaintiff-appellant.

It was averred that the plaintiff-appellant was an illiterate widowed lady living at the given address since 1999. The defendant-respondent No.1 is the elder son of the plaintiff-appellant who was residing separately at the address as given in the plaint. It was further averred that the defendant-respondent No.1 did not serve the plaintiff-appellant. It was further the case set up that the husband of the plaintiff-appellant expired on 17.05.1991 and that for the welfare of the plaintiff-appellant and her grandson - Ankit Mittal - and granddaughter - Anjali Gupta – the husband of the plaintiff-appellant had deposited huge amount from his savings in a Bank and at Chandni Chowk, Delhi Post Office in the form of fixed deposits in the name of the plaintiff-appellant. It was further the case that six fixed deposits were later on transferred to Sector 16, Faridabad Post Office and thereafter at Rohtak in the name of the plaintiff-appellant. The plaintiff-appellant applied for renewal of the old deposits in the name of the plaintiff-appellant only but due to an inadvertent mistake, the deposits were made jointly along with defendant-respondent No.1. It was on 19.07.2009 that the plaintiff-appellant came to know that the name of defendant-respondent No.1 had wrongly been included as second holder in the deposits. It was further averred that all the original Pass Books and Kisan Vikas Patra's were in the custody of the plaintiff-appellant. On notice, the defendant-respondent No.1 appeared and filed his written statement taking the preliminary objections of maintainability, cause of action, non-joinder and mis-joinder of necessary parties. On merits, it was averred that the defendant-respondent No.1 served the plaintiff-appellant after the death of his father and the plaintiff-appellant

Attorney to look after all her moveable and immovable assets as also to look after all the civil and criminal cases filed by Brij Mohan Mittal against the plaintiff-appellant and defendant-respondent No.1. It was further averred that Brij Mohan Mittal was the younger son of the plaintiff-appellant who had illegally, unlawfully grabbed all the immovable ancestral properties by transferring them in his own name and initiated false civil and criminal cases against the plaintiff-appellant and defendant-respondent No.1. It was further averred that defendant-respondent No.1 used to invest his hard earned money in the fixed deposits in the joint names of the plaintiff-appellant and defendant-respondent No.1 and, therefore, he had valuable interest in the fixed deposits. Further, the averments made in the plaint were denied. Written statement was also filed by defendant-respondent Nos.2 and 3 who stated that there was no mistake in opening the accounts. It was further stated that the Kisan Vikas Patras were purchased on different dates from Rohtak Town Post Office in the name of Kela Bai and Mahabir Parsad on 13.04.2004 and 16.09.2006 respectively through Lajpat Rai, the then SAS Agent attached to Rohtak Town Post Office and no nomination was registered. On the basis of the pleadings, the following issues were framed :

1. Whether the plaintiff is entitled to the relief of declaration as prayed for ? OPP
2. If issue no.1 is decided in favour of the plaintiff, whether the plaintiff is entitled to the relief of permanent injunction as prayed for ? OPP
3. Whether the suit of the plaintiff is not maintainable in the present form ? OPD

4. Whether the plaintiff has no cause of action to file the present form ? OPD
5. Whether the plaintiff has not affixed proper Court fee for the purpose of jurisdiction and Court fee ? OPD
6. Whether the suit is bad for mis-joinder and non-joinder of the necessary party ? OPD
7. Relief.

The Trial Court dismissed the suit holding that there was no fraud played and that the original Kisan Vikas Patra and Monthly Income Scheme always remained in possession of Kela Bai and therefore no change had been made by defendant-respondent No.1. No fraud was proved qua incorporating the name of defendant-respondent No.1 along with the plaintiff-appellant (Kela Bai). Aggrieved by the said judgment and decree dated 23.03.2015, an appeal was preferred through the legal heir of the plaintiff-appellant - Brij Mohan Mittal - which also met with the same fate vide judgment and decree dated 22.08.2017. Hence, the present regular second appeal.

Learned counsel for the plaintiff-appellant would contend that original plaintiff-appellant (Kela Bai) was an illiterate woman and the name of defendant-respondent No.1 was inadvertently added as joint holder of the deposits.

Heard.

In the present case it has concurrently been found that there was

no fraud proved by the plaintiff-appellant qua incorporating the name of

defendant-respondent No.1 in the deposits (Kisan Vikas Patras and Monthly Income Scheme). The defendant-respondent Nos.2 and 3 had also filed their written statement taking a categorical stand that the Kisan Vikas Patras were purchased on different dates from Rohtak Town Post Office in the name of Kela Bai and Mahabir Parsad (defendant-respondent No.1 herein) on 13.04.2004 and 16.09.2006. Further still, the entire documentation remained in possession of Kela Bai and thereafter in the possession of Brij Mohan Mittal and hence there could be no occasion for the defendant-respondent No.1 to have got his name added fraudulently. Counsel for the plaintiff-appellant has been unable to make a dent in the findings recorded by the Courts below.

In view of the above, I do not find any merit in the present appeal. No question of law, much less any substantial question of law, arises for determination by this Court in the present appeal. The regular second appeal, which is wholly devoid of any merit, is dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

**13.02.2023**  
Yogesh Sharma

**( ALKA SARIN )**  
**JUDGE**

NOTE: Whether speaking/non-speaking: Speaking  
Whether reportable: YES/NO