

IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH

123

CM-12150-51-C-2024 in/and
RSA-2959-2024 (O&M)
Date of Decision: 01.04.2025

Rano

.... Appellant

Versus

Jagir Singh and another

.... Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

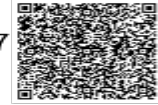
Present: - Mr. Kamal Narula, Advocate for the appellant.

NIDHI GUPTA, J. (ORAL)

CM-12150-C-2024 and CM-12151-C-2024

Prayer in the application (CM-12150-C-2024) filed under Section 151 CPC is for condonation of delay of 202 days in refiling the accompanying appeal, and prayer in the application (CM-12151-C-2024) filed under Section 5 of the Limitation Act is for condonation of delay of 1596 days in filing the accompanying appeal.

2. The only reason cited by learned counsel for the applicant/appellant in the application (CM-12150-C-2024) for cause of delay of 202 days is that “*the petitioner filed this petition on 01.04.2024 but the registry raised some objection after collection the paper book from the registry, the paper book was somehow misplaced in the briefs of the colleague of the counsel in the same chamber. When the petition was not found in the brief the same was searched in the office of the counsel but not found, request was made to all the colleague advocates of the chamber and as stated above the paper book was found in one of brief of the colleague of*

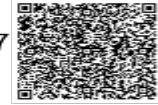


the counsel.”; and the only reason cited by learned counsel for the applicant/appellant in the application (CM-12151-C-2024) for cause of delay of 1596 days is that “the son of the appellant i.e. Des Singh (unmarried), initially who has look into the matter being the only son of the present appellant but who has died on dated 18.01.2023 after long illness, after the death of only son the appellant, appellant is not in state of mind to file present appeal before this Court.”

3. A perusal of the said applications reveals that only vague and general reasons have been given by the applicant-appellant for seeking condonation of 202 and 1596 days in re-filing and filing the accompanying appeal. The same do not constitute sufficient cause for condoning of the extraordinary and inordinate delay of 202 and 1596 days in re-filing and filing of the accompanying appeal.

4. It is well-settled proposition of law that each day's delay has to be explained in a mathematical manner which has not been done by the applicant-appellant. No cogent reason or plausible explanation has been furnished by the applicant-appellant for condonation of such an inordinate and unexplained delay in filing and refiling of the main appeal. Moreover, condonation of such an inordinate delay would be tantamount to declaring the law of limitation obsolete/redundant, without any justification.

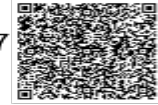
5. The Law of Limitation is enacted with a purpose, as a handmaid of Justice and cannot be ignored/reduce to an ineffective piece of paper by giving it the complete go-by. It is the bounden duty of every litigant to pursue his case diligently; and it is also the bounden duty this Court to en-



sure that justice inures to both parties concerned. With passage of time, rights of the parties get crystalized. More so, the Hon'ble Supreme Court in ***Pathapati Subba Reddy (Died) by LRs and others vs. The Special Deputy Collector (LA)***, Law Finder Doc Id # 2542600, has recently held as under:-

“26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

- (i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;*
- (ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;*
- (iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;*
- (iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;*
- (v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;*
- (vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the Court is not satisfied with the cause shown for the delay in filing the appeal;*
- (vii) Merits of the case are not required to be considered in condoning the delay; and*
- (viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.” (Emphasis added)*

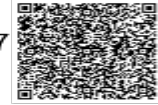


6. The above Applications, accordingly, stand **dismissed**.

RSA-2959-2024 (O&M)

The plaintiff no.2 is in second appeal against the concurrent judgments and decrees of the learned courts below, whereby the suit filed by the plaintiffs for declaration has been dismissed by both the courts below. The brief facts of the case as stated in the plaint, are that the disputed land is ancestral coparcenary property, which was inherited by defendant No.1 Jagir Singh along with his brothers Ujagar Singh, Fauja Singh, Bagga Singh and his mother Haro. After the death of Haro, mutation No. 292 of inheritance was sanctioned in favour of Jagir Singh and others in equal shares. The plaintiffs are the widow and minor son of Mohinder Singh, son of Jagir Singh. Accordingly, the appellant/plaintiff No.2 along with her minor son/plaintiff no.1, had filed the present suit for declaration along with consequential relief of possession by way of partition of land.

2. It is submitted by learned counsel for the appellant that the defendants and plaintiffs belong to a Joint Hindu Family governed by Mitakshara School of Hindu Law. It is submitted that the disputed land is ancestral/coparcenary property. It was inherited by Jagir Singh and his brothers. Jagir Singh's mother passed away and mutation No. 292 was sanctioned in favour of Jagir and others in equal shares. Jagir Singh had appointed his wife Maya as his general attorney for managing the estate. However, Maya did not have the authority to mortgage or sell the property. Despite this, she executed a sale deed on 01.12.1994 for 20k of land. It is contented that the said Sale was without legal necessity, without benefit and welfare and the interests of Joint Hindu Family.



3. It is further submitted that the above said sale deed is sham transaction. Since property is Joint and has not been partitioned, Maya had no right to sell it. Accordingly, Plaintiffs seek possession of the disputed land through partition. It is accordingly prayed that the present appeal be allowed, and the impugned judgments and decrees of the learned Courts below, be set aside.

4. No other argument is advanced on behalf of the appellant. I have heard learned counsel for the appellant. I find no merit in the submissions made on behalf of the appellant.

5. It has come on record that the present dispute being amongst family members, the matter was compromised between the parties with intervention of respectables of society. After lengthy confabulations, a compromise was arrived at between the parties as per which Jagir Singh/defendant No.1 had agreed to pay maintenance to the plaintiffs and further give share of property of deceased Mohinder Singh to plaintiffs.

6. The ld. Trial Court on the basis of pleadings of the parties, had framed the following issues: -

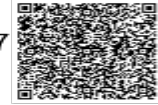
“1. Whether the plaintiff and the vendors were members of the Joint Hindu Family?OPP.

2. Whether the land in the hands of Jagir Singh was ancestral and coparcenary property qua the plaintiffs? OPP.

3. Whether the sale deed dated 1.12.1994 was for consideration and legal necessity? OPP.

4. Whether the matter had been settled in compromise and writing was made in this respect on 27.12.1993? If so its effects? OPP.

5. Whether the suit is not maintainable? OPD.

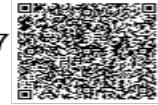


6. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD.
7. Whether the plaintiff is entitled to joint possession? OPP.
8. Relief.”

7. Vide judgment and decree dated 22.7.2002, the learned Trial Court dismissed the suit. In respect of Issue No.1 as to whether the Plaintiffs and vendors were members of Joint Hindu family, it was found that the plaintiffs had been unable to prove that they are members of Joint Hindu family. The appellant in her testimony as PW/1 did not even state that plaintiffs are also members of said Joint Hindu family. There is not a single statement of the plaintiffs to the effect that plaintiffs and defendants are joint in residence, mess, and worship or they constitute a Joint Hindu family. On the other hand, appellant has clearly stated that defendant no.1 and Maya are residing jointly.

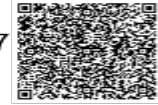
8. Further, PW/2 Gurdial Singh, PW/3 Fauja Singh s/o Kishan Singh, PW/4 Fauja Singh (son of Gurdit Singh) although orally supported the case of the plaintiffs, but they did not state that plaintiffs and defendants are joint in residence. So, plaintiffs failed to prove that the plaintiff and vendors are members of Joint Hindu family. Hence, issue No.1 was decided against the plaintiffs.

9. As regards Issue no.2 as to whether the Land in the hands of Jagir Singh was ancestral and coparcenary property qua plaintiffs, was also decided against the plaintiffs. Ex P.5 and Ex.D1 are copies of sale deed dated 1.12.1994 whereby defendant No.1 Jagir Singh through attorney Maya had sold 20K 0M of land in favour of defendant No.2 for consideration of



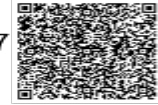
Rs.87,500/-. Plaintiffs failed to prove on record that plaintiffs and defendants constitute Joint Hindu family coparcenary; or even that the suit land is ancestral property. Plaintiff did not bring on record the mutation to prove that the suit land devolved upon defendant No.1 Jagir Singh and other heirs of Jagir Singh by survivorship. Suit land was recorded in name of Jagir Singh as owner in the revenue record as is evident from copy of Jamabandis Ex. P3 and Ex.P8 as per which suit land is neither Joint Hindu Family coparcenary property nor it is ancestral property. Devolution of 1/5th share of land owned by Kishan Singh upon his widow Haro also shows that suit land is not ancestral property, qua Jagir Singh defendant No.1 because had the suit land been Joint Hindu family coparcenary ancestral property it would have devolved upon his four sons by way of survivorship not upon his widow Haro to the extent of 1/5th share. Mere statement of DW1 Jagir Singh defendant No.1 that suit land is ancestral property is not sufficient to hold that it is joint Hindu family coparcenary ancestral property in the hands of Jagir Singh as Karta of alleged Joint Hindu Family coparcenary. On the contrary, it was clear from the evidence on record that the suit land is self acquired property of defendant No.1. Thus issue No.2 is decided against the plaintiffs.

10. Issue no.3 was also decided against plaintiffs as it was found that the plaintiffs had failed to prove on record this sale deed is without consideration. Witnesses examined by defendants specifically stated that the suit land was sold for consideration of Rs.87,500/- paid to defendant No.1 one day prior to execution of sale deed.



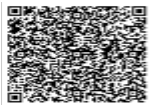
11. In respect of Issue No.4 ‘Whether matter has been settled in compromise and writing was made in this respect on 27.12.1993’, it was found that DW3 Maya had denied the execution of this agreement. Perusal of the agreement/compromise dated 27.12.1993 Ex.P6 showed that it was executed between Maya and plaintiff No.2 whereby a compromise was affected between them with intervention of Gram Panchayat. Maya had agreed to pay maintenance to appellant and had agreed to repay loan on house and land, and to pay Rs.4000/- on every crop of Hari and Saunt. As such, the trial court held that on the basis of the said agreement/compromise, the plaintiff could not claim anything from Jagir Singh, except for the terms of maintenance et cetera, as settled therein which were payable by Maya and not Jagir Singh. Accordingly, vide judgement and decree dated 22.7.2002, the suit of the plaintiffs was dismissed.

12. The plaintiffs filed appeal before the Lower appellate Court which vide judgment and decree dated 13.10.2005 partly allowed the appeal of the plaintiffs for declaration. The Plaintiffs produced the revenue record Jamabandi 1957-58; Jamabandi 1969-70 Ex.P2; and Jamabandi 1989-90 Ex.P7, which showed that after the death of Kishan Singh son of Mohan Singh, his sons including Jagir Singh and Haro widow of deceased have inherited the property of Kishan Singh. In addition to this direct evidence, admission of DW1 Jagir Singh to the effect that the land in question is ancestral property is sufficient corroboration of the contentions of plaintiffs. Accordingly, the Lower Appellate Court reversed the findings on issue No.3 as follows:-



“DW1 has testified that during the life time of Mohinder Singh, he did not give any land to his son Mohinder Singh. In order to prove legal necessity, Maya wife of Jagir Singh appeared as DW3. She has depend that Jagir Singh was not keeping good health and remained ill and she spent money on the illness of Jagir singh and on the marriage of her daughter. In my view, this explanation is only an after-thought. No such plea was taken by the defendant-respondent Maya in her written statement. In the written statement, she did not explain that the amount of sale consideration Rs. 87,500/- was needed by them for the purpose as deposed by DW3. 20 kanals of land was sold by Jagir Singh vide sale deed dated 1.12.94 Exh.P5. The defendants-respondent in my view, failed to prove that the ancestral land was sold by Jagir Singh for legal necessity. The sale deed was either without consideration or without legal necessity.”

13. Against the above said judgment dated 13.10.2005, the defendant filed RSA No. 1213 of 2006 before this Court; which vide order dated 06.03.2019 remanded the matter back to the first Appellate Court to decide Issue No.4 *‘Whether the matter has been settled in compromise and writing was made in this respect on 27.12.1993’*, afresh. Vide judgment and decree dated 20.8.2019, the learned Lower appellate Court decided the said issue against the plaintiffs and dismissed the appeal. Witnesses have stated in their evidence regarding contents of compromise deed, but the same nowhere reflects that Maya has entered into said agreement on behalf of Jagir Singh being his power of attorney. Thus, after minutely perusing the said document and evidence of witnesses PW4 and PW5, the lower appellate Court held that Ex. P6 is compromise agreement between Maya and appellant, and not between Jagir and appellant. Said compromise was



executed by Maya in her individual capacity. Plaintiffs are claiming the suit land being the legal heirs of Mohinder Singh (son of Jagir Singh). Thus, it was held that said compromise Ex.P6 does not have any effect on the suit land as it does not relate to suit land belonging to Jagir Singh.

14. Learned counsel for the appellant is unable to dispute or controvert the above said facts and findings of the learned Lower Appellate Court.

15. The present regular second appeal is accordingly, hereby **dismissed** on merits, as well as on grounds of delay.

16. Pending applications, if any, stand disposed of.

01.04.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

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