

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****234****RSA-1131-2024 (O&M)****Date of decision: 02.05.2025****Harmail Singh @ Harmel Singh****...Appellant(s)****Vs.****Gurmukh Singh and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Mr. Abhimanyu Kalsy, Advocate for the appellant.***********NIDHI GUPTA, J.****CM-4390-C-2024**

Prayer in this application filed under Section 5 of the Limitation Act read with Section Section 151 CPC is for condonation of delay of 130 days in filing the accompanying appeal.

2. Heard.

3. For the reasons mentioned in the application which is duly supported by an affidavit of the applicant/appellant, the same is allowed and delay of 130 days in filing the accompanying appeal is condoned.

CM-4389-C-2024

Prayer in this application filed under Order 22 Rule 4 read with Section 151 CPC is for impleading the legal representatives of respondent No. 2 (a) i.e. Gurvinder Kaur (since deceased).

2. Heard.

3. For the reasons stated in the application, which is duly supported by an affidavit of the applicant/appellant, the same is allowed



and the legal representatives of respondent No.2(a) are hereby impleaded as respondent No. 2(a)(i) and (ii). Amended memo of parties filed along with the application is taken on record. Office to tag the same at the appropriate place.

RSA-1131-2024 (O&M)

The plaintiff is in second appeal against the concurrent judgments and decrees of the learned Courts below; whereby the suit filed by the appellant for declaration, permanent injunction and rendition of account, has been partly allowed by both the Courts below *in-as-much* as relief of permanent injunction has been granted; whereas relief of declaration and rendition of accounts has been declined.

2. Learned counsel for the appellant submits that learned Courts below are in error in dismissing the suit of the plaintiff for relief of declaration and rendition of accounts as the appellant had duly proved on record that the plot No. B-IV-714, Mali Ganj, Ludhiana was got transferred by the appellant in the name of defendants No.1 and 2 i.e. the father and mother of the appellant and defendant No.3 i.e. Brother of the appellant, out of love, respect and being obedient and dutiful son.

3. Learned Courts below are also in error in non-passing the rendition of account of partnership firm M/s. Sukhmani Garments and Sukhmani Trader as the appellant and his brother/defendant No.3 Kulwinder Singh, were running the business of M/s. Sukhmani Garments and Sukhmani Trader. In fact, defendant No.3 has himself stated that "*the plaintiff was again associated with the business.*"



4. Furthermore, the first appellate Court was also in error in dismissing application of the appellant under Order 41 Rule 27 CPC since all the documents were very relevant to throw abundant light on the subject matter of the suit. It is accordingly prayed that the present appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

5. No other argument is raised on behalf of the plaintiff.

6. I have heard learned counsel for the appellant/plaintiff and perused the case file in great detail.

7. The appellant had filed the present suit seeking declaration to the effect that he is entitled to 1/3rd share in the house No. B-II-890 as described in the plaint; **and** 2/9th share in plot No. B-IV-714, Mali Ganj, Ludhiana; **and** for permanent injunction restraining the defendants from dispossessing the plaintiff from the above said properties except in due course of law; **and** for rendition of account of partnership firm M/s. Sukhmani Garments and Sukhmani Trader.

8. In respect of 1/3rd share in the house No. B-II-890, it was the case of the plaintiff that the said property was ancestral in nature and, therefore, he is entitled to 1/3rd share in the said property. However, the record reveals that plaintiff has miserably failed to prove that the said house was ancestral in nature or that the said property had devolved upon his father through 3 lineal stages of inheritance. On the contrary, defendants had proved on record that the house No. B-II-890 had been inherited by father of the plaintiff/defendant No.1 by way of Will Ex.D2



from his father Nanak Singh; and Nanak Singh had acquired property by way of Conveyance Deed Ex.D1*. Possession of the plaintiff in the first floor of the said property was admitted to be permissive by the defendants. It was further proved on record that the plaintiff had received an amount of Rs.4 lacs by way of Agreement Ex.D1, which was entered into between the parties to settle family disputes and Rs.4 lacs was given to the plaintiff qua his share in the above said house No. B-II-890.

9. As regards, the plot bearing No. B-IV-714, it was found that the said plot had been purchased by defendant No.3 out of the funds receivable from the business being run by defendant no.3 in the name and style of M/s. Sukhmani Garments and Sukhmani Trader. As such, plaintiff had no share in the same. The defendants had produced Ex.D10, which is form-F signed by Inspector of shops, as per which defendant No. 3 was found to be sole proprietor of M/s. Sukhmani Garments and Sukhmani Trader. Defendants had also produced receipts Ex.D11 to Ex.D24; thereby proving that amounts had been paid by defendant No.3 and not by the plaintiff. Moreover, plaintiff had specifically admitted in his cross-examination that registry of Plot No. B-IV-714 was in the name of defendant No.3. The plaintiff had produced loan application Ex.P4 to prove his partnership in the firm M/s. Sukhmani Garments and Sukhmani Trader. However, the said loan application in no manner proved that plaintiff was partner in the said firm because plaintiff was not shown to be either guarantor or proprietor.



10. As regards claim of the plaintiff that he was partner in the firm M/s. Sukhmani Garments and Sukhmani Trader, no evidence whatsoever was produced by the plaintiff to show that he had any right in the shop No. 685 where the said business in the name and style of M/s. Sukhmani Garments and Sukhmani Trader was being run by defendant No.3. Plaintiff did not produce any document to show that he had ever purchased the said property and contributed any fund towards purchase of the said property. In view of the above, prayer of the plaintiff for rendition of account in respect of firm M/s. Sukhmani Garments and Sukhmani Trader 685, Mali Ganj Chowk, Near Dr. Maghi Ram, Ludhiana was also rightly declined.

11. Learned counsel for the appellant is unable to dispute or controvert the above said facts and findings of the learned Courts below.

12. In view of the above, present regular second appeal is hereby **dismissed.**

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

02.05.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

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