

RSA-2293-2023 (O&M)

2025.10.28 17:41



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

RSA-2293-2023 (O&M)

Date of decision : 29.09.2025

Parveen Kumar

..... Appellant

Versus

Rajesh Kumar

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. P.S.Dhaliwal, Advocate for the appellant.

PANKAJ JAIN, J. (ORAL)

CM-7728-C-2023

This is an application for condonation of delay of 383 days in re-filing the present appeal.

For the reasons recorded in the application, this Court is satisfied that the applicant-appellant has shown sufficient cause to condone the delay in re-filing the appeal.

Application is allowed. Delay of 383 days in re-filing the appeal is condoned.

CM-7727-C-2023

This is an application for condonation of delay of 10 days in filing the present appeal.

For the reasons recorded in the application, this Court is satisfied that the applicant-appellant has shown sufficient cause to condone the delay in filing the appeal.



Application is allowed. Delay of 10 days in filing the appeal is condoned.

Main case

1 Defendant is in second appeal. For convenience parties hereinafter are referred to by their original position before the Court of First Instance i.e. the appellant as defendant and the respondent as plaintiff.

2 Plaintiff filed a suit for possession by way of partition with the consequential relief of permanent injunction restraining the defendant from changing nature of the suit property or alienating the same without partition.

3 As per plaintiff, he and defendant are co-sharers to the extent of equal share and are in possession over the suit property purchased by them vide sale deed dated 02.06.1983. Since the purchase, they continued to be joint owners in possession over the same. On the purchased land, they constructed shop. The relations between the plaintiff and the defendant turned sour over time, and the plaintiff now seeks partition by way of present suit.

4 Suit was contested by the defendant. It is claimed in the written statement that the plaintiff is neither owner nor in possession over the suit property. Father of the parties to the suit, namely Jatinder Nath is in exclusive possession over the suit property. On the date the property was purchased, the plaintiff was a minor having no source of income. Plot was purchased by Jatinder Nath-father in the name of two sons out of love and affection. Entire consideration was paid by Jatinder Nath. Construction was raised by Jatinder Nath by incurring expenses from his own pocket.

The original title deed is also in custody of Jatinder Nath who is running



business from the shop in question under the name and style of M/s Jatinder Nath and Company. Agreement to sell dated 17.12.2007 was executed between Jatinder Nath and plaintiff. Plaintiff received Rs.4,50,000/- on 17.12.2007. It was agreed between the parties that the remaining amount of Rs.1,50,000/- would be paid by Jatinder Nath to the plaintiff on or before 17.04.2008 and the sale deed would be executed.

5 On the basis of the pleadings Court of the First Instance framed following issues :-

- “1. Whether the property in question is joint between the parties? OPP*
- 2. Whether the plaintiff is entitled for relief of partition? OPP*
- 3. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP*
- 4. Whether the suit of the plaintiff is not maintainable? OPD*
- 5. Whether the suit bad for non-joinder of necessary parties? OPD*
- 6. Relief.”*

6 Answering issues No.1 to 5 both the Courts below returned concurrent finding that the plaintiff being co-owner to the extent of 1/2 share along with the defendant is entitled to seek partition. The plea raised by defendant regarding Jatinder Nath being true owner has not been proved by leading any evidence. Had Jatinder Nath been the actual owner, there was no need for him to enter into an agreement to purchase the suit property with the plaintiff. Suit filed by the plaintiff stands decreed.

7 Counsel for the defendant has assailed the findings recorded by the Courts below. He submits that on the date the suit property was



purchased by way of registered sale deed in favor of the plaintiff as well as defendant, i.e. 02.06.1983, plaintiff was minor and had no source of income. Thus, it stands proved that the sale deed *qua* the suit property in favor of the plaintiff as well as defendant is in fact a *benami* transaction. It has been contended that Jatinder Nath raised loan from State Bank of Patiala for raising construction on the first floor of the said shop. Entire loan amount was returned by Jatinder Nath from his own sources. It is Jatinder Nath who is carrying on business under the name and style of M/s Jatinder Nath and Company thus, the Courts below erred in decreeing the suit filed by the plaintiff.

8 I have heard learned counsel for the appellant-defendant and have gone through records of the case.

9 From the records, it is evident that the suit land was purchased vide sale deed dated 02.06.1983. As per the same, plaintiff as well as defendant are the co-owners of the suit property to the extent of 1/2 share each. Accordingly, the ownership of the plaintiff as per the document of title stands proved. Appellant-defendant has taken stand claiming that the ownership vests in Jatinder Nath as the sale dated 02.06.1983 was in fact a *benami* transaction. The said stand taken by the defendant stands rebutted by their own averment that Jatinder Nath agreed to purchase suit property from plaintiff vide agreement to sell dated 17.12.2007 Ex.D2. It has been claimed that plaintiff even received an amount of Rs.4,50,000/- as part payment from Jatinder Nath and was to receive balance amount on 17.04.2008 i.e. the date fixed for registration of sale deed. Nothing has been brought on record to show the ultimate fate of the agreement to sell Ex.



D2 and Ex.D3. It is not discernible from the records as to whether Jatinder Nath filed any suit for specific performance against the plaintiff. As per the defendant himself the agreed date to get the sale deed executed was 17.04.2008. Present suit was filed on 16.08.2012, i.e. after the prescribed period of limitation for filing suit for specific performance on the strength of agreement to sell dated 17.12.2007 had already expired.

10 Counsel for the defendant has not been able to show as to how the plea with respect to Jatinder Nath being the actual owner of the suit property on the strength of sale deed dated 02.06.1983 can be looked into in view of the stand taken by defendant that Jatinder Nath agreed to purchase the suit property from plaintiff that too after paying him a valuable consideration of Rs.6,00,000/-.

11 In view of above, this Court finds that the plaintiff has been proved to be a joint owner in possession of the suit property to the extent of 1/2 share. No fault can be found with the courts decreeing the suit filed by the plaintiff seeking possession by way of partition.

12 Finding no merits in the present appeal, the same is ordered to be dismissed.

13 Pending miscellaneous application, if any, also stands disposed off.

29.09.2025
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No