

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

RSA-3060-2019 (O&M)

Date of decision: 10.12.2025

Gurmail Kaur**...Appellant**

Versus

Gurnam Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: Mr. L.S. Sidhu, Advocate for the appellant.

DEEPAK GUPTA, J. (ORAL)

The present appeal arises out of the concurrent findings recorded by the Courts below. The plaintiff, Gurmail Kaur (appellant herein), filed a suit for a decree of permanent injunction, which the Trial Court dismissed on 2.2.2016. The plaintiff's first appeal was dismissed by the First Appellate Court on 13.7.2017. The appellant has challenged those concurrent orders before this Court.

2. The present appeal is accompanied by an application **(CM-8223-C-2019)** under Section 151 of the Code of Civil Procedure seeking condonation of a delay of 485 days in refiling the appeal. It is stated in the application that the appeal was initially filed on 24.10.2017 but was returned by the Registry on account of certain objections. One objection was the absence of an affidavit. It is pleaded that a letter from the counsel was sent to the appellant but did not reach her; there was an alleged communication gap between the appellant and her counsel, which according to the appellant, caused the delay in refiling. The application is supported by the appellant's affidavit.

3. The legal question on the preliminary issue is whether the application to condone the delay should be allowed. The power of the Court under Section 151 CPC to condone delay is not unfettered, as an applicant must satisfy the Court that the delay was due to sufficient cause or circumstances warranting exercise of the extraordinary jurisdiction. The length of



delay, the reasons offered, the conduct of the litigant and of the counsel, and the prejudice to the opposite party are relevant factors to be weighed in the balance.

3. Applying these well-settled yardsticks to the facts disclosed in the present application, the Court finds the explanation to be wholly unsatisfactory. After the Registry returned the appeal on account of defects/objections, it was incumbent upon the counsel to inform the appellant promptly and to take steps for curing the defects. Equally, a litigant who places her cause in the hands of counsel must exercise ordinary vigilance and maintain communication on an important matter like filing an appeal against an adverse decree. Neither is there any explanation of steps taken by the appellant during the 485 days to ascertain why the appeal had not been filed nor is there contemporaneous documentary proof like postal records, courier receipts or dated correspondence to substantiate a continuous effort to cure the defect. The affidavit filed in support is, in the Court's assessment, an ex post facto attempt to explain an inordinate delay.

4. The delay of 485 days is not a trivial interregnum. Courts have consistently held that long unexplained delays attract strict scrutiny and, absent cogent, proximate and credible reasons, must be rejected. Here, the explanation boils down to a communication lacuna between the advocate and the appellant and a general assertion that the counsel sent a letter which "did not reach" the appellant. Such bald averments are not of a nature to justify condonation of such a protracted delay. On the material before this Court, there is no due diligence shown by the appellant nor any demonstrable dereliction by the opposite party or the Registry that would give rise to equitable relief.

5. For these reasons, the Court is not persuaded to exercise the residual power under Section 151 CPC in favour of the appellant. The application (CM-8223-C-2019) to condone the delay of 485 days in re-filing is therefore dismissed. Consequent thereto, the appeal is barred by limitation and is liable to be dismissed on that ground alone.



6. **Main Case:** I shall nonetheless proceed to consider the appeal on merits.

7. The core disputed questions on merits are (a) whether the plaintiff/appellant was in possession of the suit property and entitled to protection by injunction; and (b) whether the plaintiff had proved title to the suit property.

8. The plaintiff's case, in brief, is that she is the wife of the deceased Gian Singh; that her father-in-law, Bachan Singh, had divided his holdings such that each of his four sons (Gurnam Singh, Gurdev Singh, Dhian Singh and Gian Singh) received 2 biswa; that the land in dispute was part of the share that fell to Gian Singh. It is the plaintiff's case that Gian Singh purchased four marla from Bhola Singh in 1975 and another four marla from Gurdev Singh in 1979 and thereon constructed a house, which was used for tethering animals and storing fodder. It was alleged that the defendants interfered with the plaintiff's possession and attempted forcible dispossession.

9. The defendants controverted this claim and asserted that defendant No.1 had purchased the suit property by virtue of a registered sale deed dated 4.12.1995 (Ex.D-1) executed by the previous owner Kartar Kaur and that the defendant has been owner in possession ever since.

10. The Trial Court, after scrutinising the oral and documentary evidence, concluded that the plaintiff had failed to prove either possession of the suit property or title thereto. The Trial Court accepted the defendants' plea that defendant No.1 was the owner in possession based upon Ex.D-1. Notably, a witness for the plaintiff (PW-4 Avtar Singh) admitted in cross-examination that the house in which the plaintiff resided was situated at a distance of about 100 yards from the property in dispute; when pressed, the plaintiff sought to explain that she lived in two houses. The Trial Court found these explanations neither convincing nor supported by reliable evidence.



11. The First Appellate Court re-appraised the evidence and concurred with the findings of the Trial Court. The Appellate Court recorded its reasons and found no misappreciation of material evidence.

12. The appellant's sole substantive grievance before this Court is that the evidence was not properly appreciated. When concurrent findings of fact have been recorded by the Trial Court and affirmed by the Appellate Court, interference by this Court is permissible only if there is a manifest perversity or misreading of evidence. Appellate re-examination is not a roving commission to retry questions of fact unless the conclusions are demonstrably perverse or founded on no evidence.

13. A careful reading of the judgments of Courts below shows that the courts considered the documentary exhibits and the oral testimony; the presence of a registered sale deed (Ex.D-1) in favour of defendant No.1 was specifically noticed and accepted. The plaintiff's oral testimony and her witnesses did not furnish particulars or corroborative material to displace the presumption of title and possession arising from the sale deed relied upon by the defendants. The admitted fact that the house in which the plaintiff lived was some distance away from the disputed property negatively impacts the plaintiff's claim of exclusive possession of the suit land. The attempt to explain the discrepancy by asserting occupancy of two houses is unsupported by independent evidence.

14. In the circumstances, this Court finds no reason to disturb the concurrent findings recorded by the Courts below.

15. Resultantly, the appeal is dismissed on both counts — firstly, because it is barred by limitation and the application to condone the delay is rejected; and secondly, on merits for lack of proof of possession and title by the plaintiff. No order as to costs.

10.12.2025

(DEEPAK GUPTA)
JUDGE

YOGESH MEHTA *Yogesh*
2025.12.11 15:47
I attest to the accuracy and
integrity of this document

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