

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****259****RSA-2602-2024 (O&M)****Date of decision: 16.09.2025****Harbans Kaur****...Appellant(s)****Vs.****Sukhdev Singh and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Atul Nehra, Advocate for the appellant.

NIDHI GUPTA, J.**CM-10764-C-2024**

Prayer in this application filed under Section 151 CPC is for condonation of delay of 438 days in refiling the accompanying appeal.

2. The reasons cited in the application for condonation of delay of 438 days in refiling the appeal are as under:-

"1. That the above mentioned regular second appeal was filed but the same was returned with certain objections by the registry. The same was refiled after removing objections but again there were certain technical objections pointed out.

2. That after the objections was removed, the appeal along with the relevant documents and annexures were kept in some other brief by the clerk of the counsel for the appellant. The said papers were searched and traced with great difficulty which led to delay in filing the present petition."



3. The above cited reasons are vague and do not constitute sufficient cause to condone extraordinary delay of 438 days in refiling the present appeal. It is cardinal principle of law that delay of each day has to be explained. Reliance may be placed upon recent judgment of Hon'ble Supreme Court in **Civil Appeal No. 11794 OF 2025** titled as **Shivamma (Dead) by LRs Vs. Karnataka Housing Board and others, 2025 INSC 1104 decided on 12.09.2025.**

4. As such, no ground is made out for condoning inordinate delay of 438 days. Present application accordingly stands **dismissed**.

CM-10765-C-2024

Prayer in this application filed under Section 5 of the Limitation Act is for condonation of delay of 7 days in filing the accompanying appeal.

2. 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 7 days in filing the accompanying appeal is condoned.

RSA-2602-2024 (O&M)

Present Second Appeal has been filed by the plaintiff No.1 against the concurrent judgments and decrees of the Courts below; whereby suit for declaration and permanent injunction filed by the plaintiffs, has been dismissed by both the Courts below.

2. Brief facts of the case are that the plaintiffs had filed a suit seeking declaration to the effect that plaintiffs are the joint owners in possession of the land as described in the plaint to the extent of 1/6th share previously owned by Smt. Joginder Kaur; **and** suit for declaration to



the effect that mutation No.2693 and mutation No. 2309 entered on the basis of alleged Will dated 30.03.2007 are illegal, null and void and liable to be set aside; **and** that the Will dated 30.03.2007 is liable to be cancelled; **and** suit for permanent injunction restraining the defendant No.1 from alienating, transferring or creating any sort of charge over the suit property and changing the existing position of the suit property till the decision of the case.

3. Brief facts of the case are that the suit land was previously under the ownership of Puran Singh/father-in-law of the appellant; and grandfather of plaintiffs No. 2 to 5; and father of defendant No.1 and performa defendants. Puran Singh had died in 1981-82; whereafter suit property was inherited by his wife Joginder Kaur Kang and his two sons namely Malkiat Singh/deceased husband of the plaintiff No.1/appellant; and Sukhdev Singh/defendant No.1. Malkiat Singh had expired in the year 1999 and his property was inherited by his mother Joginder Kaur Kang and the plaintiffs. It was further pleaded that after the death of Puran Singh, Joginder Kaur had been sponsored by defendant No.1 in 1982 for permanent residence in Canada. From 1982 till her death, Joginder Kaur has visited India only for 3-4 times in 32 years. It was pleaded that Joginder Kaur had love and affection towards her children and grandchildren including the plaintiffs. During her lifetime, Joginder Kaur was looked after by the plaintiffs and her daughters/performa defendants. Joginder Kaur was owner in possession of suit land being khewatdar. It was further averred/alleged that defendant No.1 had got entered the



mutation No.2693 pertaining to village Khamanon Khurd and mutation No. 2309 pertaining to village Ria on the basis of forged and fabricated Will dated 30.03.2007. Joginder Kaur had never executed the said alleged Will dated 30.03.2007. The said Will is surrounded by suspicious circumstances as Joginder Kaur was not in a sound and disposing state of mind as she was under treatment of Doctors in Canada. Moreover, no reason has been given as to why she had excluded the plaintiffs being her daughter-in-law and grandchildren; as also the performa defendants from the said Will. Joginder Kaur had expired on 06.01.2014 at Khamanon when she was visiting India. After her death and performing last ritual, plaintiffs had requested defendant No.1 to initiate proceedings regarding estate of Joginder Kaur. It was then that defendant No.1 disclosed regarding the Will of 2007 in his favour. Accordingly, present suit was filed on 06.05.2014.

4. Vide judgment and decree dated 10.09.2021, learned Additional Civil Judge (Senior Division), Khamanon had dismissed the suit of the plaintiffs. The Appeal filed by the plaintiff No.1 was dismissed by the learned District Judge, Fatehgarh Sahib vide judgment and decree dated 28.03.2023. Hence, present Second Appeal by the plaintiff No.1.

5. It is *inter alia* submitted by learned counsel for the appellant that the learned Courts below were in patent error in non-suiting the plaintiffs as they failed to take into account the fact that the last Will of Joginder Kaur dated 14.09.2009 was duly witnessed and attested by 2 witnesses being the Solicitor and Law Clerk in Canada; where she was



residing and had obtained permanent citizenship and had been issued passport by Canadian Government. It is submitted that the said Will was discovered by the appellant only after the death of Joginder Kaur and was duly produced by the appellant before the learned First Appellate Court by way of application under Order 41 Rule 27 CPC. However, the said application has been dismissed, and the said additional evidence has been wrongly discarded by the learned First Appellate Court.

6. It is further submitted that the learned first Appellate Court erred in law in not considering that the Will of the Late Smt. Joginder Kaur dated 14.9.2009 vide which she has made the plaintiffs (her Late Son's legal heirs) and the defendant-Sukhdev Singh (Brother-In-law) the beneficiary in equally shares, was more reasonable, balanced and justified, than the Will dated 30.3.2007 produced by the defendant vide which the entire estate had been given to the defendant without giving any share to the plaintiffs. Thus, the learned first Appellate Court erred in law in dismissing the application of the appellant under Order 41 Rule 27 CPC for placing on record and leading additional evidence for proving the last Will of Late Smt. Joginder Kaur dated 14.9.2009 vide order dated 28.3.2023 along with the appeal, which was necessary for proper adjudication of the matter in dispute. The findings of the learned courts below are perverse being contrary to settled law that a Will can be executed anywhere without any restrictions and deserves to be treated as valid. Accordingly, the application of the appellant/plaintiff deserved to be allowed, and appellant should have been permitted to place on record the



last Will as additional evidence of the deceased and given opportunity to prove the same.

7. It is further submitted that the findings of the learned first Appellate Court that the last will of the deceased placed on record cannot be considered because it has not been proved, is erroneous and misplaced in view of the fact that the application of the appellant under Order 41 Rule 27 CPC for leading additional evidence regarding the Will was yet to be allowed and the appellant/plaintiff had yet not been given any opportunity or permission to prove the Will. Thus, in absence of the same, the question of proving the said last Will could not arise.

8. It is accordingly prayed that the present Second Appeal be allowed; and the impugned judgments and decrees be set aside. It is further prayed that the order dated 28.03.2023 passed by learned District Judge, Fatehgarh Sahib dismissing the application of the appellant under Order 41 Rule 27 CPC for placing on record the last Will of Joginder Kaur as additional evidence be also set aside.

9. No other argument is raised on behalf of the appellant. I have heard learned counsel and perused the case file in great detail. I find no merit whatsoever in the submissions advanced on behalf of the appellant.

10. First and foremost, it is admitted fact on record that the Will dated 30.03.2007 solely in favour of defendant No.1 is a registered Will. As such, presumption of truth is attached to a registered document. Further, the said Will has been duly proven in accordance with law before the learned Courts below. Learned Trial Court has clearly recorded that the



photograph of Joginder Kaur alongwith witnesses and the Sub Registrar is appearing on the reverse of the Will. The Sub Registrar has duly made endorsement in the Will that the same was read over to Joginder Kaur who had accepted the contents of the same as correct. The Will is firstly attested by Numberdar, respectable of the village. To prove the Will, defendant No.1 had examined both the attesting witnesses as DW3 and DW4, who had filed their affidavits categorically stating that Joginder Kaur had executed a registered Will in favour of defendant No.1 out of her own free Will and volition. They had further deposed that Will was drafted at the instance of Joginder Kaur by Document Writer Magat Rai Wadhera, who after drafting the same had read over and explained the contents thereof to Joginder Kaur. Joginder Kaur had affixed her thumb impressions after admitting the contents of the Will and has also appended her signatures on the Will. Despite lengthy cross-examination, plaintiffs could not shake the testimony of the above witnesses.

11. Further plaintiff No.1 had herself appeared as PW1 and was unable to produce any medical record to prove that Joginder Kaur was not of sound and disposing mind or even that she was under treatment. Plaintiff had also admitted that she had not attended the marriage of children of defendant No.1. The plaintiffs further admitted that last rites and ceremonies of Joginder Kaur was performed by defendant No.1 and he had immersed her ashes in Kartarpur Sahib. Moreover, the plaintiff had failed to bring on record any evidence to show that the Will dated 30.03.2007 had been got executed fraudulently. Thus, the Will dated



30.03.2007 Ex.P1 whereby Joginder Kaur had bequeathed her entire property in favour of defendant No.1 stood duly proved on record. In actual fact, appellant contradicted herself by stating that on the one hand that Joginder Kaur was not in a sound and disposing mind while executing the Will; while simultaneously taking the stance that the Will was got executed fraudulently by getting signatures and thumb impressions of Joginder Kaur on some papers. It has been stated on behalf of the appellant, that no reason had been given by Joginder Kaur to exclude the appellant and other inheritors from the ancestral property. It was contended that appellant was claiming right of property on the basis of a natural succession. However, it has come on record that Joginder Kaur never lived with Malkiat Singh (deceased husband of the appellant) and his family during his service in the Army for 30 years; and that Joginder Kaur was looked after by defendant No.1. As already noted above, it has been admitted by the appellant herself as PW1 that the last rites of Joginder Kaur were performed by defendant no.1 and it was he, who had immersed ashes of Joginder Kaur at Kartarpur Sahib.

12. Before the learned First Appellate Court, plaintiff No.1 had produced a Will dated 14.10.2009 which she sought to bring on record by way of application under Order 41 Rule 27 CPC. It was the averment of the appellant in the said application that by way of Will dated 14.10.2009, the appellant had been appointed as Trustee of all the properties owned by Joginder Kaur situated outside Canada. However, the said assertions of the appellant are fully disproved from the findings on record to the effect that



the appellant has failed to examine any witnesses to prove the said Will dated 14.10.2009. Even the said Will was not produced on record by the appellant. Moreover, no cogent reasons have been given for not producing the said Will heretofore. In this regard, the findings of the learned First Appellate Court are contained in para 9 of the judgment dated 28.03.2023, relevant extract of which is reproduced as under: -

“9.....Now, application has been moved by present appellant for proving the Will dated 14.10.2009. However, perusal of the record shows that numerous opportunities were granted to the present appellant to examine witnesses, but the Will dated 14.10.2009, was never produced or proved on record during the pendency of the civil suit. The Will now sought to be proved on record is not a registered document and thus, the appellant cannot be granted permission to prove the said Will, at this stage. Even, the story put forth in the application by the appellant that now the said Will has been traced seems to be unbelievable as the case was hotly contested and, in the application, it is only mentioned that now Will has been traced. Similarly, the judgment dated 11.11.2021, which is now being sought to be proved by moving application Under order 41 rule 27 CPC by respondent no.1 Sukhdev Singh is liable to be dismissed as the said judgment is not at all essential to be considered in the present case as in the present case the controversy is with regard to Will dated 30.03.2007 which was not the subject matter in the criminal case. As stated above, the respondent No.1 has duly proved the Will dated 30.03.2007, executed by Joginder Kaur Kang. Thus, the applications for additional evidence are dismissed. It is held that in view the above discussion there is no infirmity and

illegality in the impugned judgment passed by the learned trial Court.”

13. Learned counsel for the appellant is unable to controvert or dispute the above said facts and findings.
14. Keeping in view the above noted facts and findings, no ground is made out to interfere in the concurrent judgments and decrees of the learned Courts below.
15. The present Regular Second Appeal is hereby **dismissed**, on merits as well as on grounds of delay.
16. Pending applications, if any, stand disposed of.

16.09.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No