

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****114****RSA-5874-2019 (O&M)****Date of decision: 27.10.2025****Naresh Kumar****...Appellant(s)****Vs.****Om Singh****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Abhishek Dhull, Advocate as
Legal Aid Counsel for the appellant.

NIDHI GUPTA, J.**CM-16803-C-2019**

Prayer in this application filed under Section 151 CPC is for
condonation of delay of 280 days in refiling the accompanying appeal.

2. For the reasons mentioned in the application which is duly
supported by an affidavit of the learned counsel for the
applicant/appellant, the same is allowed and delay of 280 days in refiling
the appeal is condoned.

CM-16810-C-2019

Prayer in this application filed under Section 5 of Limitation Act
is for condonation of delay of 124 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 124 days in filing the appeal is condoned.

RSA-5874-2019 (O&M)

Plaintiff is in Second Appeal against the concurrent judgments and decrees of the learned Courts below; whereby the suit filed by the appellant for recovery of possession of suit property allegedly encroached upon by the defendant, has been dismissed by both the Courts below.

2. Brief facts of the case are that the plaintiff had filed the present suit with the pleading that Suit property is ancestral in nature and Plaintiff had received the same from his father. The suit property came to the share of the plaintiff in a Family Settlement dated 03.04.2002/Mark A. Since 2002, plaintiff had been owner in possession of the suit property. It was alleged that as plaintiff was residing in Nazafgarh for 15 years and in his absence, defendant had encroached upon it in January 2012 and installed 2 tin sheds. Accordingly, present suit was filed on 16.10.2012.

3. Vide judgment and decree dated 03.04.2017, the learned Additional Civil Judge (Senior Division), Jhajjar had dismissed the suit of the plaintiff with costs. The Civil Appeal filed by the plaintiff was also dismissed by the learned Additional District Judge, Jhajjar vide judgment and decree dated 22.01.2018. Hence, present Second Appeal by the plaintiff.



4. It is *inter alia* submitted by learned counsel for the appellant that the suit property has come to the share of plaintiff in family settlement (Mark A) dated 03.04.2002 from his father as the same is the ancestral property of the plaintiff and he is in peaceful possession of the same since 03.04.2002 but both the courts below have failed to consider the relevant document adduced by the plaintiff. It is submitted that it is important to note that DW 3 Bhup Singh has specifically stated in his cross-examination that the defendant Shri Om Singh went to the house of plaintiff situated at Najafgarh in the year 2005 and took permission to tie his cattle on the disputed property and there was no talk of sale of plot between them but both the courts below have not considered this relevant fact at all. It is further submitted that PW 2 Raj Kumari, real sister of plaintiff has specifically stated in her cross-examination that it is wrong that family settlement has not been executed between plaintiff and their father and it is also wrong that the said family settlement is wrong. DW 5-Defendant himself gave two contradictory statements i.e. on one hand he stated that thumb impression at Sr. No. 15 is of Kanshi Ram but no name has been written on it and on the other hand he himself again stated that Kanshi Ram had put his signatures on writing (Ex. D-1) but both the courts below have not considered this relevant fact at all. The courts below have failed to appreciate that no person from the family of plaintiff was present at the time of execution of said receipt (Ex. D-1) and there is no stamp/ticket on the same. So, there is no authenticity of the document written on plain paper. Kartar Singh (executant of Ex. D-2) has not been



examined by the defendant to prove the same but both the courts below have not considered this relevant fact at all.

5. It is accordingly prayed that the present Second Appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

6. No other argument is raised on behalf of the appellant.

7. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions made on behalf of the appellant.

8. A perusal of the record of the case reveals that learned Courts below have given concurrent findings which have not been dispelled by the appellant. Firstly, the plaintiff has failed to prove the alleged Family Settlement dated 03.04.2002 Mark A. The Family Settlement Mark A does not bear thumb impressions or signatures of all the family members. Rather, it bears two sets of signatures of Kanshi Ram, father of the plaintiff thus, raising doubts about its authenticity. The plaintiff had even failed to examine any attesting witness to the Family Settlement. Though the name of Rajesh Kumari PW2 has appeared as witness to the said Settlement, however, she did not confirm in her deposition that the said Settlement had taken place in her presence. Plaintiff has failed to produce any revenue record to establish his ownership over the suit property. Claim of the plaintiff that the suit property came through Family Settlement is not buttressed by any evidence on record except his own self-serving statement.



9. On the other hand, as per Receipt dated 23.10.1998 Ex.D1, the suit property described as "*Chowk Wala Plot*" as mentioned in the Family Settlement, had already been sold by the plaintiff's father in the year 1998 to the brother of the defendant for an amount of Rs.50,000/-. The defendant had proven on record that he is a bonafide purchaser of the suit property. The defendant had successfully proved the Receipt dated 23.10.1998 Ex.D1 and Receipt dated 03.04.2007 Ex.D2 from which it is established that the defendant had purchased suit property from Kartar Singh/brother of the plaintiff for a valid sale consideration of Rs.80,000/- in the year 2007. In support, the defendant had examined DW1 and DW3. DW1/widow of Suresh/brother of the defendant had fully supported the version of the defendant. Moreover, father of the plaintiff Kanshi Ram had already sold one plot vide Receipt Ex.D1 before the alleged Family Settlement. So, the same could not have been given to the plaintiff thereafter. Moreover, PW2 Rajesh Kumari/sister of the plaintiff had not supported the alleged Family Settlement. Even claim of the plaintiff that he was dispossessed in January 2012, is not supported by any independent evidence. Plaintiff failed to produce any complaint made by him after his alleged dispossession before filing of the suit. Even suit has been filed after 10 years of alleged encroachment.

10. Ld. Counsel for the appellant is unable to controvert the above said concurrent findings of the learned Courts below. Moreover, it is established legal position that in second appeal, it is not open to this Court to re-appreciate, reconsider or interfere in the concurrent findings of fact



returned by the Courts below. It is not open to this Court to re-examine the evidence and/or said concurrent findings unless an error apparent is made out in the procedure or Law. I am supported in my view by the judgment of Hon'ble Supreme Court in **M/s. Shivali Enterprises v. Godawari (Deceased) (SC): Law Finder Doc Id # 2034559** wherein it is held that no matter howsoever incorrect or grossly erroneous the concurrent findings of the learned courts below may be, this Court in Second Appeal can interfere in the concurrent findings only where there is an error in law or procedure. In the present case, no such error in law and procedure has been made out by the appellant.

10. Further, as per judgment of the Hon'ble Supreme Court in **State of Rajasthan vs. Shiv Dayal (2019) 8 SCC 637**, it is not open for this Court to interfere in the concurrent findings of fact returned by the Courts below *"unless it is pointed out that it was de hors the pleadings or it was based on no evidence or based on misreading of material on record and documents."* The Hon'ble Supreme Court in **"Mst. Sugani vs. Rameshwar Das and another"** Law Finder Doc Id# 123580, has gone on to further hold that *"the concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers in second appeal"*. Again, in **Avtar Singh Vs. Bimla Devi and others, 2021(4) RCR (Civil) 402** Hon'ble Apex Court has held that finding of fact cannot be interfered with in exercise of second Appellate jurisdiction.

11. Accordingly, in view of the factual and legal position noted above, the present Regular Second Appeal stands **dismissed**.
12. Pending applications, if any, stand disposed of.

27.10.2025

(NIDHI GUPTA)

Divyanshi

JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No