

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

RSA-715-2025 (O&M)**Date of Decision: 15.05.2025**

PAWAN KUMAR

. . . . Appellant

Vs.**SHEELA DHIMAN (SINCE DECEASED) THROUGH LRS AND OTHERS**

. . . . Respondents

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. P.K. Dwivedi and
Mr. Parminder Singh Kanwar, Advocates,
for the appellant.

Mr. Ayush Gupta, Advocate and
Mrs. Shalini Singh, Advocate, for respondent No.1.

DEEPAK GUPTA, J.**CM-2543-C-2025**

This application is filed under Section 151 CPC for condonation of delay of 137 days in re-filing the appeal.

For the reasons mentioned in the application, supported by the affidavit of clerk of the counsel, the same is allowed and the delay of 137 days in re-filing the appeal is hereby condoned.

CM-2544-C-2025

This application is filed under Section 151 CPC for condonation of delay of 8 days in filing the appeal.

For the reasons mentioned in the application, supported by the affidavit of the appellant, the same is allowed and the delay of 8 days in filing the appeal is hereby condoned.

RSA-715-2025 (O&M)

Suit for rendition of accounts and partition; and dissolution of the firm besides for distribution of assets and liabilities including moveable and immoveable properties, as filed by the plaintiff-Sheela Dhiman (*since deceased*) through her LRs (*now respondent*) was decreed by the trial Court on 20.07.2016. The appeal filed by the defendants-*appellants herein* was dismissed by the First Appellate Court on 23.05.2024.

2. Against the aforesaid concurrent findings, the present Regular Second Appeal has been filed by the defendants.

3. It has not been disputed before this Court that plaintiff was one of the partners of defendant No.2-M/s Mahalaxmi Modern Rice Mills, Shahabad Markanda, as per the partnership deed dated 01.04.1999. Plaintiff had asked for the rendition of accounts along with the decree of dissolution of the said firm, distribution of the assets of the firm to the partners to the extent of their shares, besides decree of permanent injunction to restrain the defendants from alienating the property of the firm.

4. The stand of the defendants was that plaintiff had retired from the firm by way of retirement deed dated 17.08.2006 and had received her entire share in the profits of the firm at the time of her retirement and thus, she was left with no connection with the accounts or property of the firm.

5. As rightly noticed by the Courts below that since it was an undisputed fact that plaintiff was partner of the firm on 01.04.1999, so it was for the defendants to prove that plaintiff had retired as per retirement deed dated 17.08.2006, which was relied by the defendants. However, defendants failed to prove the said retirement deed dated 17.08.2006.

6. In this regard, the observations made by the First Appellate Court read as under: -

“12. The defendants have placed on file a photocopy of the retirement-deed dated 17.08.2006 on the file as Mark-D1 on 18.05.2013 and as Mark-

D2 on 11.08.2014. However, the original retirement-deed was not produced before the court by the defendants in support of their contention nor any witness of the said retirement-deed was examined before the court in order to prove the said document. Rather, perusal of the aforesaid documents shows that it is a notarized copy of a notarized document. In other words, it is a photocopy of a photocopy, and not a photocopy made from original. In order to prove the said retirement-deed, the defendants have examined Shri Deepak Bhatnagar, Advocate and Notary Public as DW1. The said witness was shown the document Mark-D2 upon which he stated that he had attested the same after both the parties would have appeared before him. DW1 has also submitted that he might have taken the signatures of both the parties in his register and he might have attested it on 07.12.2006. He has also submitted that he did not remember whether he had seen the original documents before attesting the aforesaid photocopy. In other words, even the Notary Public has not testified with surety whether he had actually attested the said document after seeing the original.

13. In his cross-examination, DW1 has submitted that his Notary Register had been burnt when he was admitted in PGI and his house had caught fire. In other words, even the Notary Register has not been produced before the court in order to prove the entry, if any, made by the Notary Public after attesting the said document. DW1 has also admitted that the original of the above-said document Mark-D1/D2 was not prepared or typed in front of him. He has also admitted that he was not in a habit of checking the identity proof of the parties before attesting their documents and he used to attest any document produced by anybody simply by telling his name. DW1 has also submitted that he could not tell whether the person who had brought the document in question to him for the purpose of attestation was the same who had executed the said document or not. The said witness has also submitted that he could not even identify the executors or witnesses of the said documents. In other words, the alleged retirement-deed dated 17.08.2006 pleaded by the defendants has gone unproved.”

7. It is very evident from the abovesaid observations made by the First Appellate Court, which are based upon proper appreciation of evidence that the original retirement deed dated 17.08.2006, as relied by the defendants, was not at all produced before the trial Court. It is only the photocopy of the same, which was placed on record as Mark D1 and another photocopy as Mark D2. These were produced in May 2013 and August 2014. Not only this, none of the witnesses of the alleged retirement deed was examined by the defendants. The Courts below has also noticed that Mark D1 and Mark D2 were the notarized copy of the notarized documents, which clearly showed that these were photocopy of the photocopy, which were notarized and DW1, who was examined to prove the same, conceded that he did not even remember as to whether the original documents were produced before him before attesting the photocopy.

8. In the abovesaid facts and circumstances, the Courts below did not commit any error in coming to the conclusion that the retirement deed dated 17.08.2006 remained unproven due to the absence of the original, lack of credible witness testimony and failure to establish proper attestation. Once it is so, it was rightly held that plaintiff was partner of the firm and as such, she was entitled to the relief claimed by her in respect of rendition of accounts, dissolution etc.

9. Learned counsel for the appellant could not convince this Court regarding any illegality or perversity in the above concurrent findings of facts as recorded by the Courts below, in the absence of any cogent proof regarding the retirement deed, relied by the defendants-appellants.

9. Consequently, this Court does not find any merit in the present appeal and hence, the same is hereby dismissed.

15.05.2025

Vivek

(DEEPAK GUPTA)
JUDGE

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes
No