



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
214 RSA-817-2018(O&M)
Date of decision: 12.12.2025

Bhushan Lal Juneja

...Appellant(s)

Vs.

Surender Kumar & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Parminder Singh, Advocate
for the appellant.

NIDHI GUPTA, J.
CM-2015-C-2018

This is an application under Section 5 of Limitation Act for
condonation of delay of 89 days in filing the appeal.

After going through the contents of the application, which is
supported by affidavit of the appellant, the same is allowed subject to all just
exceptions and delay of 89 days in filing the present appeal is condoned.

MAIN CASE

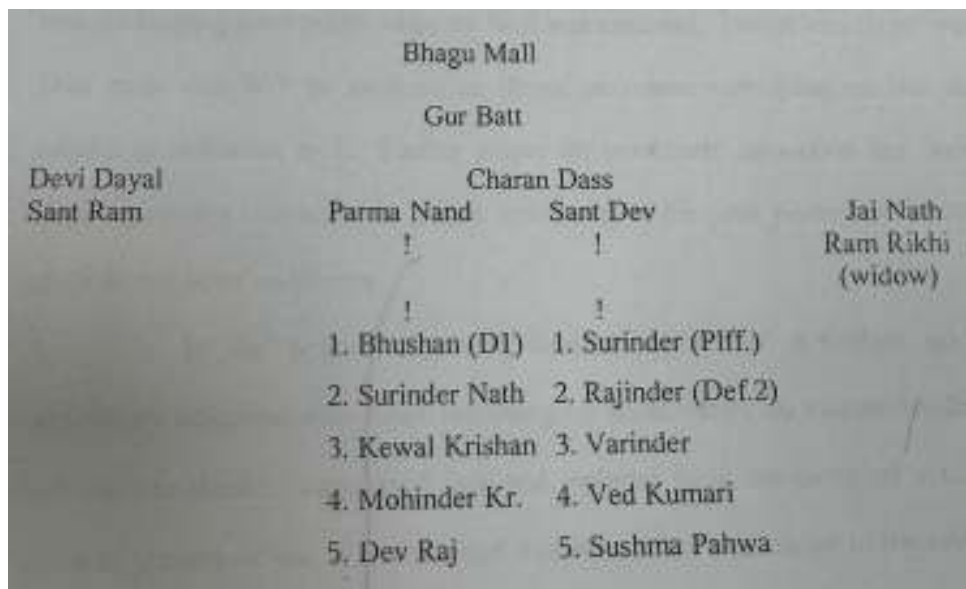
The defendant is in Second Appeal against the concurrent
judgments and decrees of the learned Courts below whereby suit filed by the
plaintiff/respondent No.1 for declaration with consequential relief of
permanent injunction, has been decreed by both the Courts below.

2. Present appeal is of the year 2018 and notice in the main appeal
is yet to be issued. The appeal has been filed with a delay of 89 days in which



application, notice was issued on 18.12.2018. Thereafter, the matter has been adjourned repeatedly at request of learned counsel for the appellant. Accordingly, vide last order dated 02.12.2025, last opportunity was granted to the appellant to address arguments; and matter is being heard today.

3. To better understand the dispute between the parties, family pedigree table shall be useful, which is as under:-



4. It was pleaded in the plaint that defendant No.2 is the real brother of the plaintiff, and his interest is similar to that of the plaintiff. It was stated that agricultural land measuring 621 kanal 2 marla comprised in Khasra Nos.437 to 444 is the Private Family Dharmarath Property, which was owned by the ancestors of the present parties; which was allotted to Jai Nath, Parma Nand, Sant Dev, Sant Ram, which was held in Pakistan. The said land was left as Private Family Trust under the management of Sh. Charan Dass,



Devi Dayal, Sant Ram as Managers. Ram Rikhi, widow of Jai Nath expired on 31.01.2008 and had allegedly executed Will dated 15.01.2002 in favour of the defendant No.1. It was the case of the plaintiff that the Will dated 15.01.2002 is a forged document. It was further pleaded that since the suit property is Family Trust property, therefore, the same cannot be stated to be owned by anyone and could not have been alienated in any form or manner. Thus, the Will dated 15.1.2002 does not convey any title. It was also pleaded that the witnesses to the Will are interested persons. Moreover, Ram Rikhi was not in good health when the alleged Will was executed. Accordingly, a declaration was sought that the Will dated 15.01.2002 is an illegal document and prayer for permanent injunction was made restraining the defendant No.1 from interfering in the joint possession of the plaintiff and other co-sharers. With these pleadings, suit was filed on 12.12.2008.

5. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, learned Civil Judge (Junior Division), Karnal had decreed the suit of the plaintiff with costs vide judgment and decree dated 21.05.2013. The Civil Appeal filed by the defendant No.1 was dismissed by the learned Additional District Judge, Karnal vide judgment and decree dated 30.05.2017. Hence, present Second Appeal by the defendant No.1.

6. It is inter alia submitted by learned counsel for the appellant that the learned Courts below were in error in non-suiting the appellant as they failed to appreciate that the appellant had duly proved the Will set up



by him. It is submitted that the Will (Ex.D1) has been proved by the appellant by leading comprehensive evidence which has not been rebutted by the respondent. The Will Ex. D1 shows that there is clear intention of Testator to execute the Will and bequeath the property. The testator has further averred that all other legal heirs/nephews have been given their own share, while she was pleased with the services of the defendant being her nephew; and had accordingly executed the registered Will in favour of the appellant. The attesting witness Bir Singh and Scribe of the Will were examined in terms of Section 68 of the Evidence Act to prove the due execution of the Will.

7. It is further submitted that as per the Revenue entry in the record of right, there is mention of word 'Dharmarth' in the column alongwith the right of the parties. The share of Ram Rakhi has been mentioned as owner of 1/6th share with entry 'Makbuja Malkan' as per Jamabandi for the year 2001-02 Ex.D2. The position in the revenue record is clear that all the legal heirs of Parmanand, Santo and Jai Nath are owner to the extent of their own share in equal manner. It is contended that the entry of Dharmarth in the Revenue record is without any basis of any written deed and it is the family affairs properties of another ancestor namely Charan Dass. The parties to the lis inherited the properties through their predecessor in interest namely Charan Dass in equal manner whereas share of Jai Nath s/o Charan Dass through his widow Ram Rakhi was inherited on the basis of Will by the appellant. The inheritance on the name of Dharmarth beside the



property of Jai Nath has not been challenged by any of the other legal heirs. Further, there was no dispute to the effect that the same set of properties inherited by legal heirs of Parmanand and Sant Dev on the name of Dharmarth is not giving them absolute right and title of the property.

8. Ld. Counsel further submits that the defendant has brought on record sanctioning of mutations of various properties in the name of Dharmarth by way of additional evidence. The copies of the mutations were enclosed with the appeal to prove the fact that the property in the name of Dharmarth was inherited by the legal heirs of Parmanand and Sant Dev. Therefore, by virtue of Section 5 of the Indian Trust Act, all the property vested in public trust without any document, is to be inherited by their own legal heirs or by Will of the Trustee. At the most, Ram Rakhi can be held to be Trustee of the property and is therefore, legally entitled to execute the Will in favour of the appellant.

9. Furthermore, it is a matter of fact that Smt. Ram Rakhi on the basis of Will Ex.D1 cancelled the previous Will i.e. 216/15.11.1996 and there was no challenge made to her authority to execute the Will in previous occasion. Only because Smt. Ram Rakhi intended to give the property in favour of defendant, challenge has been made on the ground that it is a Trust property. The plaintiff cannot be allowed to make hot and cold in one breath. The plaintiff on one hand inherited the property of Sada Nand in the name of "Dharmarth Trust" as owner thereof. In this eventuality, the plaintiff



cannot make challenge of property of Jai Nath i.e. other co-sharer in favour of Bhushan/defendant. This matter of the aspect has been totally ignored by the Ld. Courts below and hence liable to be set aside.

10. In support of his contentions, learned counsel relies upon judgment of Delhi High Court in **Vibrant Institute of Technology v. All India Council for Technical Education, (Delhi) : Law Finder Doc ID # 203913**, wherein it is held that: -

“A. Trust Act, Section 5 - All India Council For Technical Education Act, 1987 Sections 10(k), 23 Stamp Act, Section 31 - Constitution of India, 1950, Article 226 - Trust of Immovable Property - Grant of Letter of Intent - Conveyance charges in accordance with law paid and document executed in accordance with law on appropriate stamp paper and registered - Under the law, a founder trustee can settle his properties with the trust on execution of an appropriate instrument which is duly stamped and registered - Once the document is legally executed, issue of letter of intent/letter of approval can not be denied - Authority held liable to issue letter of intent/letter of approval.”

11. Learned counsel accordingly prays for setting aside of the impugned judgments and decrees of the learned Courts below.

12. No other argument is made on behalf of the appellant.

13. I have heard learned counsel and perused the case file in detail.

I find no merit in the submissions advanced on behalf of the appellant.



14. It is a fact on record that the suit property is in the ownership of the Dharmarath Family Trust. The correctness of this fact is established from the voluminous revenue record produced by the plaintiff from the year 1955-56 up to 2006-07, showing the ownership of Dharmarath Trust in all the Jamabandis in the ownership column; and entry has been made that the Trust is in the management of Ram Rikhi. Therefore, the suit property being Trust Property, it was not within the power of the testator Ram Rikhi to bequeath the same by way of the impugned Will to the appellant. Even as per the Khasra Girdwaris for the year 2007-08, property is appearing in the name of Dharmarath Trust. This fact has been admitted by the appellant in his cross-examination that entry in the Revenue Record in favour of the Trust is still continuing. Defendant No.1 has also admitted that he did not know whether any application had been made for correction of the entries in the Jamabandis; and that he himself had not moved any such application. Whereas the plaintiff as PW1 had categorically stated in his deposition and cross-examination that a Trust had been created on the land of Sant Ram, Parma Nand, Sant Dev and Jai Nath. Admittedly, in the Will (Ex.D1) Ram Rikhi has not mentioned anything regarding dissolution of Trust or even the character of the suit property. No evidence was led by the appellant to show that the said Trust was ever dissolved at any time. In fact, even no pleading to this effect has been made by the appellant. Even no



Mutation entries have been affected in favour of the defendant No.1 on the basis of the said Will.

15. No doubt that the Will in question was per se proved to be a valid document, however as established hereinabove, Ram Rikhi was not authorised to bequeath the suit land as her personal property, as the suit land was Trust Property, which cannot be willed away. No explanation has been given by the appellant as to how the suit land continued to be shown in the ownership of the Trust and the Revenue Record if it was not so.

16. Further, learned counsel for the appellant cannot derive benefit from the aforesaid relied upon judgment in **Vibrant Institute (supra)**, as the same is distinguishable on facts and law. Moreover, learned First Appellate Court has relied upon comprehensive case law, which has not been distinguished by the learned counsel for the appellant.

17. Learned counsel for the appellant is unable to dispute or controvert the aforesaid facts and findings.

18. In view of the above, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. Present Second Appeal accordingly stands **dismissed**.

19. Pending application(s) if any also stand(s) disposed of.

(Nidhi Gupta)
Judge

12.12.2025
Sunena

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