



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
223

RSA-2106-2023(O&M)
Date of decision: 27.03.2026

Balkar Singh

...Appellant(s)

Vs.

Harmesh Singh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Harkaran Singh, Advocate (Legal Aid Counsel)
for the appellant.

NIDHI GUPTA, J.
CM-7120-C-2023

This is an application under Section 151 of CPC for condonation
of delay of 757 days in re-filing the appeal.

The reason for condonation of such inordinate delay in filing the
present appeal is that:-

*"... ..registry again raised objection on 22.06.2022 and
thereafter, the undersigned counsel change his office for
whitewash, during that period the brief of the present case
are mis-placed, yesterday it was found from the decided
cases and today is being filed without any further delay, so
the delay has occurred."*

The above-said explanation given by the applicant/appellant is
cryptic and does not constitute sufficient cause to condone the inordinate



delay of 757 days in re-filing the appeal. No Details are given and no material is furnished to show as to on what date the learned Counsel had changed his office. In recent judgment of **“Shivamma (Dead) by LRs Vs. Karnataka Housing Board & Others” Civil Appeal No.11794 of 2025 decided on 12.09.2025**, Hon’ble Supreme Court has held that delay of each day is to be explained. To condone such an inordinate delay, would be tantamount to declaring the Law of Limitation as redundant; and would also be prejudicial to the rights of the opposite party.

Accordingly, the present application stands **dismissed**.

CM-7122-C-2023

This is an application under Section 5 of Limitation Act read with Section 151 CPC for condonation of delay of 68 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 68 days in filing the present appeal is condoned.

MAIN CASE

Present appeal has been filed by the plaintiff against the concurrent judgments and decrees of the learned Courts below whereby suit filed by the appellant for declaration and permanent injunction, has been dismissed by both the Courts below.

2. Mr. Harkaran Singh, Advocate (Legal Aid Counsel) appears on behalf of the appellant and files Power of Attorney, which is taken on record.



3. It is *inter alia* submitted by learned counsel for the appellant that the plaintiff and defendants No.1 to 3 real brothers and defendant No.4 is their father. On 05.06.1991, the plaintiff and defendants No.1 to 3 had purchased 0 kanal 10 marla land in the name of defendant No.4; and again on 19.06.1995 land measuring 0 kanal 10 marla was bought in same manner. It is contended that sale consideration was paid from joint Hindu Family Funds. However, defendant No.4 had transferred the land measuring 0 kanal 10 marla in favour of defendant No.1 vide Transfer Deed dated 17.03.2008. Defendant No.4 had also transferred land measuring 0 kanal 17 marla in favour of defendants No.2 and 3 vide Sale Deed dated 17.07.2012. It is contended that the said Transfer Deeds were illegal, null and void; and the consequent Mutations No.552 and 649 had also been wrongly entered on the basis of the said Transfer Deeds. It is submitted that the plaintiff had been wrongly ignored and that he has a right, title and interest in the suit property.

4. Learned counsel appearing on behalf of the plaintiff further submits that the Courts below failed to take into account that even after filing the present suit, the appellant and the respondents had entered into a Compromise in the presence of Jathedar Buta Singh of village Shadipur and other persons, wherein it had been settled that the respondents will pay an amount of Rs.1.80 lakh to the appellant and the appellant will thereafter withdraw the suit. The respondents have themselves admitted the share of the appellant in the property in question and therefore, the appellant has right in



the suit property. It is reiterated that both the Courts below have failed to take into account that the land was purchased from the funds of Joint Hindu Family and therefore, the appellant has a share in the suit property which has been wrongly ignored and the suit property has been illegally transferred in the name of the respondents. It is accordingly prayed that the present appeal be allowed and the impugned judgments and decrees of both the District Courts be set aside.

5. No other argument is raised on behalf of the appellant. I have heard learned counsel and perused the record in detail. I find no merit in the submissions advanced on behalf of the appellant.

6. A perusal of the record of the case shows that the defendants in their written statement before the learned trial Court had categorially pleaded that the Suit was time barred; that the suit property is self-acquired property of defendant No.4; it was denied that the suit property had been purchased out of Joint Hindu Family Fund; it was denied that suit property is Joint Hindu Family property; joint possession of the suit land was denied; and it was positively averred that the plaintiff is not serving defendant No.4; that he is residing separately; and that the plaintiff had also obtained share in the other property of the defendant No.4; and dismissal of the suit had been prayed for.

7. Thus, case set up by the appellant had been positively resisted and opposed by the respondents.



8. On the basis of pleadings of the parties, the learned trial Court had framed the following issues vide order dated 13.05.2014:-

- “1. Whether the plaintiff is entitled to claim the relief of declaration, as prayed for? OPP*
- 2. Whether the plaintiff is entitled to claim the relief of permanent injunction, as prayed for ?OPP*
- 3. Whether the suit of the plaintiff is not maintainable in its present form? OPD*
- 4. Whether the proper court fee and stamp have not been affixed by the plaintiff, if so, its effect? OPD*
- 5. Whether the application is time barred ?OPD*
- 6. Relief.”*

9. However, a perusal of the record of the case shows that the appellant has failed to lead any evidence whatsoever to prove his case despite availing 12 opportunities including three last opportunities. It is not denied by learned counsel for the plaintiff that plaintiff had also failed to step into the witness box for cross-examination. Learned trial Court in its judgment dated 20.10.2016 has categorically recorded that the plaintiff had availed several opportunities to lead his evidence but failed to produce the same; and therefore, in the absence of any evidence, issues No.1 and 2 were decided against the plaintiff. It was further recorded that due to lack of evidence, findings on issues No.3, 4 and 5 become redundant. Consequently, Id. Civil Judge (Junior Division), Patiala dismissed the suit of the plaintiff under Order 17 Rule 3 CPC vide judgment and decree dated 20.10.2016.



10. The Civil Appeal filed by the plaintiff was also dismissed by the learned Additional District Judge, Patiala vide judgment and decree dated 09.07.2018. The relevant observations of the learned First Appellate Court in judgment dated 09.07.2018 are as follows: -

“11. Now to determine these points turning to the pleadings and evidence on record, it has revealed that in this case after completion of pleadings, issues were framed by the learned trial Court on 13.5.2014 and stay application was decided on 30.7.2014. Afterwards case was fixed for evidence of the plaintiff for 26.9.2014. He has not filed any PF/DM, list of witnesses for summoning of any witness on record. The matter does not end here because the plaintiff has availed further various dates i.e. 14.11.2014, 15.1.2015, 7.4.2015, 16.9.2015 and 10.11.2015. Ultimately, the court has given last chance on 10.11.2015 for 15.1.2016. However, on 15.1.2016 the court was not hold by the learned Presiding Officer and again opportunity was granted to the plaintiff for 14.3.2016. Again neither plaintiff was present nor any of his witness was produced on 14.3.2016 and court has adjourned the case for 29.3.2016 by passing a detailed order granting him last opportunity with further observations that no further opportunity be given. On 29.3.2016 the appellant Balkar Singh has tendered his affidavit in his examination in chief and then again various dates were granted to the plaintiff for 26.7.2016 and 17.9.2016 with again a detailed order, The court has again granted last opportunity to the plaintiff for 20.10.2016, but, again neither plaintiff has appeared and nor any of the witness was produced by him. As such, the court is constrained to close the evidence of the plaintiff by order.



12. In the above light, perusal of the record revealed that there remain no doubt and dispute that the plaintiff has already availed 12 opportunities including the last opportunities thrice, but, he himself has failed to appear in the court to face the cross-examination. As such, it does not lie in the mouth of the plaintiff that no proper opportunity was given to him and order is passed by the learned lower court in any manner is illegal or erroneous. The perusal of the orders passed by the learned trial court from time to time reveals that the plaintiff has made mockery of the system by taking various adjournment, though he was not entitled for the same. As such, when there is no iota of evidence on record led by the plaintiff to prove his stand averred in the plaint. Now turning to the legal aspect, it has revealed that learned counsel for appellant has relied upon **Vijay Kumar (supra)** and contended with vehemence that appellant has not granted proper opportunity by the learned lower court to lead his evidence, but, this plea raised by learned counsel for appellant is not tenable, because the plaintiff has already availed 12 opportunities including the last opportunities thrice, but, he himself has failed to appear in the court to face the cross-examination. As such, the learned trial court has rightly held that the plaintiff is neither entitled for declaration nor for relief of permanent injunction as prayed by him. Consequently, the findings recorded by the learned lower court on issues No.1 and 2 are found to be legal and sustainable, which is hereby affirmed.”

11. Learned counsel for the appellant is unable to dispute or controvert the aforesaid facts and findings. Accordingly, even coordinate



Bench of this Court, had issued notice in the present appeal vide order dated 06.07.2023, only for the limited purpose to explore the possibility of resolving the dispute amicably as it was between real brothers. However, the record reveals that mediation has not been successful. Even otherwise, there is no merit to the present appeal in view of the facts noticed hereinabove.

12. In view of the above, present Regular Second Appeal stands **dismissed.**

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

27.03.2026
Sunena

(Nidhi Gupta)
Judge

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