**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****115****RSA-2156-2023 (O&M)****Date of decision: 28.04.2026****Balwant Singh (deceased) through LRs****...Appellant(s)****Vs.****Surya Kant and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Sachin Mittal, and
Mr. Akshat Mittal, Advocates
for the appellant.

*********NIDHI GUPTA, J.****CM-7387-C-2023**

Prayer in this application filed under Section 151 CPC is for
condonation of delay of 89 days refiling the accompanying appeal.

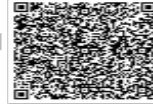
2. Heard.

3. For the reasons mentioned in the application which is duly
supported by an affidavit of the applicant/appellant No.iv, the same is
allowed and delay of 89 days in refiling the appeal is condoned.

CM-7388-C-2023

Prayer in this application filed under Section 5 of the Limitation
Act is for condonation of delay of 1 day in filing the accompanying appeal.

2. Heard.



3. For the reasons mentioned in the application which is duly supported by an affidavit of the applicant/appellant No.iv, the same is allowed and delay of 1 day in filing the accompanying appeal is condoned.

CM-7389-C-2023

Prayer in the present application under Order 22 Rule 3 read with Volume 5, Chapter-I, Part C(2) of High Court Rules and Orders and Section 151 CPC is for bringing on record the legal representatives of deceased Smt. Ramrati widow of late Sh. Balwant Singh.

2. Heard.

3. In view of the reasons mentioned in the application, which is supported by affidavit of the applicant-appellant No.iv, the same is allowed and the applicants as mentioned in para 3 of the application are hereby impleaded as legal representatives of the deceased/appellant-Smt. Ramrati subject to all just exceptions and for the purpose of this litigation alone.

RSA-2156-2023 (O&M)

The plaintiff is in Second Appeal against the concurrent judgments and decrees of the learned District Courts, whereby suit filed by the appellant for partition, has been dismissed by both the District Courts.

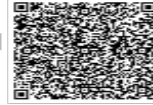
2. It was the pleaded case of the appellant that plaintiff and defendants are joint co-owners of land comprised in Rectangle No. 153 measuring 12K-15M. Share of plaintiff in the suit property is 1/3rd; share of defendants No. 2 and 3 is 1/9th; share of defendants No. 4 to 6 is 1/9th;



and share of defendants No. 7 to 11 is 1/3rd. It was averred that some of the parties have constructed pucca houses and temporary rooms over suit property without partition. It was contended that as there was constant quarrel amongst co-sharers, hence partition by metes and bounds is essential. It was alleged that defendants wanted to usurp entire property and threatened to change the nature of the suit land by raising construction. It was further pointed out that defendants No.1 to 6 had filed a fictitious suit titled as **Surya Kant and others vs. Balwant Singh** which is still pending. It was contended that the admission of the plaintiff in that suit is erroneous, unlawful and against law; and plaintiff has filed proper application for withdrawal of his erroneous admissions made by him in that suit. Plaintiff had requested defendants several times to partition the suit land by metes and bounds however, to no avail. Hence, present suit was filed on 17.04.2012.

3. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Junior Division), Gurgaon had dismissed the suit of the plaintiff with costs vide judgment and decree dated 19.12.2016. The Civil Appeal filed by the plaintiff was dismissed by the learned Additional District Judge, Gurugram vide judgment and decree dated 03.10.2022. Hence, the present second appeal by the plaintiff.

4. It is *inter alia* submitted by learned counsel for the appellant that in non suiting the appellant, the learned District Courts have primarily being swayed by an alleged compromise vide which the plaintiff is stated to have relinquished his share in the suit property in favour of defendants no.

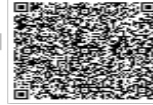


1 to 6. The alleged compromise was allegedly entered in another suit filed by the respondents. It is argued that the said alleged compromise cannot be relied upon also for the reason that the respondents had also moved an application praying for decreeing the said suit under Order 12 Rule 6 of CPC; which was dismissed against which **CR-1567-2017** titled as **Surya Kant and others vs. Balwant Singh (deceased) through his LRs** was filed before this Hon'ble Court, which was dismissed vide order dated 27.02.2025.

5. Learned counsel for the appellant further submits that the learned District Courts were in error in non-suiting the appellant merely on the basis of alleged admission made by the appellant in a previous suit. It is submitted that both the District Courts failed to appreciate that plaintiff has also moved application in that suit praying for withdrawal of the said admission. However, the fact remains that the suit is pending adjudication and so is the validity of the compromise, thus, it was not justified of the learned District Courts to dismiss the suit of the appellant in view of the said compromise in another suit which is still pending adjudication.

6. It is further submitted by learned counsel for the appellant that the respondents herein who were defendants before the learned District Courts were duty bound to discharge their onus by leading cogent evidence and not just by relying upon a compromise which is pending adjudication.

7. Learned counsel for the appellant submits that therefore, impugned judgments and decrees are based on conjectures and surmises. He accordingly prays that the present Appeal be allowed; and the impugned judgments and decrees of the Id. District Courts be set aside.

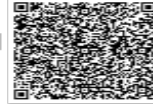


8. No other argument is raised on behalf of the appellant. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions advanced on behalf of learned counsel for the appellant.

9. It is undisputed fact on record that in the previous Civil Suit No. 88 of 2012 titled as **Surya Kant and others v.s Balwant Singh**, a Compromise dated 07.05.2012 Ex.DX3 had been entered into between the parties; whereby present plaintiff had relinquished his 1/3rd share in the suit property in favour of defendants No.1 to 6. In the said Civil Suit, plaintiff/appellant had also recorded his statement Ex.DX1; and had also filed written statement Ex.DX2; thereby admitting the claim of defendants No. 1 to 6. In view of the above admitted facts, the appellant has already relinquished his share in the suit property in favour of the defendants no.1 to 6, plaintiff/appellant had no locus standi to seek partition of suit property through the present suit.

10. As far as application for withdrawal of admission filed by the plaintiff is concerned, said application stood dismissed by the learned Civil Judge (Junior Division), Gurgaon vide order dated 14.10.2016. Thus, appellant was not permitted to withdraw his admission made on oath; and the duly signed Compromise; and the admitted written statement. While dismissing the said application, the learned Trial Court held that the said admission needs to be tested as piece of evidence and proof thereof cannot be dispensed with.

11. It is also undisputed fact on record that in the said previous Civil Suit, an issue had been framed to determine the voluntariness of the



appellant's admission therein. Nothing has been brought to the notice of this Court that till date, the said issue has been decided in favour of the appellant.

12. Contention of the appellant that a person has right to prove that his admission was erroneous, is misconceived as admittedly, in the said previous suit, learned Trial Court has framed issue in regard to the genuineness of the admission made by the appellant. Thus, plaintiff has already been given right to prove as to how his admission is erroneous by framing issue. In this regard, relevant observation of learned first Appellate Court in para 17 of the judgement dated 03.10.2012, is as under: -

*"17. Learned counsel for the appellant-plaintiff has referred to the law laid down by Hon'ble Apex Court in **Delhi Transport Corporation versus Shyam Lal: 2004 AIR (SC) 4271** and **Geo-Group Communications Ltd. vs. IOL Broadband Ltd. : (2010) 1 SCC 562**, to claim that a person has a right to prove that his admission was erroneous, so, in this case, benefit of admission to defendants No.1 to 6 can't be given in this case. This Court is of the view that there is no dispute to law cited and to comply with this legal requirement, learned trial Court before which admission was made, has already given right to the present plaintiff to prove as to how his admission is erroneous by framing an issue. But, certainly, neither learned trial Court of present suit nor this Court in appeal can simultaneously decide whether or not said admission was erroneous and it has to accept the position of admission as on date which shows it intact. Hence, benefit of these authorities is not available to the plaintiff in the given circumstance.*

Thus, findings of learned trial Court on issue No.1 are affirmed and further, it is held that non-joinder of necessary

parties also make this suit not maintainable. The suit is also held not maintainable as the plaintiff has no cause of action to maintain this suit.”

13. In view of the above noted facts, no ground is made out to interfere in the impugned judgments and decrees of the learned District Courts below. The present Regular Second Appeal is hereby **dismissed**.
14. Pending applications, if any, stand disposed of.

28.04.2026
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No