



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
209

RSA-1610-2023(O&M)
Date of decision: 08.05.2026

Kala Singh

...Appellant(s)

Vs.

Harbans Kaur

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Avtar Singh Bhatti, Advocate
for the appellant.

NIDHI GUPTA, J.
CM-5804-C-2023

This is an application under Section 5 of Limitation Act read with
Section 151 CPC for condonation of delay of 238 days in filing the appeal.

It is mentioned in Para 3 of the present application that:-

"3. That the judgment and decree was passed 15.07.2021 during Covid period and the appellant was not aware about the decision of his appeal and he only came to know about the decision when he received summons from Executing court, Dasuya, he immediately contact his counsel, however his counsel pointed him some relevant documents and the same was not traceable and after lot of efforts the same was supplied after the delay of filling the present appeal."

The above cited reason does not constitute sufficient cause to
condone extraordinary delay of 238 days in filing the present appeal. The



applicant/appellant is admitting that he was not pursuing his case diligently as he did not even know that decree had been passed. As such, the sole reason cited by the appellant is not sufficient ground to condone delay of 238 days in filing the appeal. Moreover, it is cardinal principle of law that delay of each day has to be explained. In this regard, reliance may also be placed upon recent judgment of Hon'ble Supreme Court in **"Shivamma (Dead) by LRs Vs. Karnataka Housing Board & Others"** Civil Appeal No.11794 of 2025 decided on **12.09.2025**. As such, no ground is made out for condoning inordinate delay of 238 days. Present application accordingly stands **dismissed**.

MAIN CASE

The defendant is in Second Appeal against the concurrent judgments and decrees of the District Courts whereby suit filed by the plaintiff/respondent for possession with consequential relief of permanent injunction, has been decreed by both the District Courts.

2. It was the pleaded case of the plaintiff that the plaintiff along with her daughters and son is owner of land measuring 0 kanal 2 marla as described in the plaint. Father of the defendant was serving the husband of the plaintiff in his fields as daily wager. As such, husband of the plaintiff had allowed father of the defendant to reside in the suit property. After demise of husband of plaintiff, father of the defendant or defendants have no right, title or interest in the suit property. It was alleged that the defendant is illegally, forcefully and unlawfully threatening to encroach over the suit property by raising



construction thereupon. Hence, present Suit seeking possession of the suit land ~~or~~ in the alternative suit for possession of the above property by removal of construction raised by defendant during pendency of the Suit, was filed on 11.04.2014.

3. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, Id. Civil Judge (Junior Division), Dasuya had decreed of Suit of the plaintiff vide judgment and decree dated 26.10.2017 as follows:-

“7. As a sequel of my findings on the above said issues, the suit of the plaintiff succeeds and decree for possession of land measuring OK-2 Marlas comprised in khata No. 933/1000 Khasra No. 412(0-2) marked as ABCD shown as RED in the site plan attached herewith situated in village Miani, HB No. 532 as per entries contained in Jamabandi for the year 2011-2012, Tehsil Dasuya, Distt. Hoshiarpur is passed in favour of the plaintiff and the defendant is directed to hand over the actual, physical, vacant possession of the suit land to the plaintiff within a period of three months from the date of judgment.

The suit of the plaintiff is further decreed for permanent injunction in favour of the plaintiff and against the defendant, restraining the defendant, his agents, representatives, attorneys etc. and also from changing the nature of the suit property by way of construction in any manner whatsoever fully detailed and described in the head note of the plaint except in due course of law. In the peculiar circumstances of the case, the parties are directed to bear their own costs. Decree Sheet be prepared and file be consigned to the record room.”



4. The Civil Appeal filed by the defendant was dismissed by the learned Additional District Judge, Hoshiarpur vide judgment and decree dated 15.07.2021. Hence, present second appeal by the defendant.

5. It is inter alia submitted by learned counsel for the appellant that the learned District Courts have failed to appreciate that the appellant became owner of the suit property by way of adverse possession. It is contended that the defendant/appellant has clearly proved on record his adverse possession over the suit property by way of filing documentary and oral evidence to show that his possession on the suit property is continuous, hostile, and with notice of the plaintiff and his possession was never interrupted for more than 20 years. In fact, the plaintiff herself in her plaint has admitted possession of the defendant over the suit property. Thus, both the learned District Courts have failed to appreciate that the plaintiff duly proved on record his possession over the suit property and he is staying there by raising the construction and the plaintiff and nor her husband and co-sharers never raised any objection at that time and he is in possession over the suit property for more than 20 years without any interruption and hence, he became the owner in possession by way of adverse possession. It is accordingly prayed that the present appeal be allowed and impugned judgments and decrees be set aside.

6. 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.



7. It is the contention of the appellant that he has become owner of the suit property by way of adverse possession. Thus, firstly, he is admitting ownership of the respondent over the suit property. However, appellant can derive no benefit from the said plea as, a perusal of the record shows that the appellant has abjectly failed to prove that his possession over the suit property was continuous, hostile and with notice to the plaintiff. Both the District Courts have given a concurrent finding that the long possession of the defendant over the suit property was permissive in nature and did not entitle defendant to claim adverse possession. Defendant failed to prove that he came in possession not as a licensee and that his possession was not permissive but was adverse and hostile to the plaintiff. Rather, the defendant while appearing as DW3, has admitted that the suit property was handed over to the defendant by the husband of the plaintiff. The defendant as DW3 has also admitted that the suit property is in ownership of the plaintiff and her sons and daughter and he has constructed house in 3 marla of the same. The defendant has further admitted in his evidence that he has no Sale Deed in respect of the Khasra No.412 of which he is alleged to be in possession. DW1 Dayal Singh has also admitted that the disputed Khasra Number is in ownership of the plaintiff. This has also been admitted by DW4 Balwinder Singh. Thus, the defendant and all his witnesses have admitted that the plaintiff Harbans Kaur is owner of the suit property. The defendant has failed to produce any Sale Deed in his favour or any other document to prove his ownership over the suit property. Even as per



the Jamabandi for the year 2011-12 (Ex.P2), the plaintiff was shown to be in cultivating possession over the suit property. Thus, contention of the defendant that he is owner by way of adverse possession was not proved.

8. Further, the contention of the appellant that plaintiff has admitted in her plaint that defendant is in adverse possession of the suit property is factually incorrect as all that the plaintiff has stated in the plaint is that; *“The father of the defendant was serving the husband of the plaintiff in his fields as daily wager, so the husband of the plaintiff allowed the father of the defendant to reside in the suit property.”* The above-said averment can nowhere be construed as an admission of the possession being continuous, hostile or in notice of the plaintiff. Thus, plaintiff being owner can file Suit at any time on the basis of title. Therefore, Suit is not barred by limitation.

9. It is also necessary to point out that the defendant had previously filed Suit for permanent injunction (Ex.PB) against the plaintiff; which was dismissed in default for want of appearance of the defendant/appellant herein (plaintiff therein) vide order (Ex.PA). Thus, the defendant has not proceeded in his own case. Accordingly, in view of the above facts, the learned Courts below have correctly held that the possession of the defendant over the suit property was permissive in nature and was never adverse.

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



- 11. In view of the above discussion, present Regular Second Appeal stands **dismissed**.
- 12. Pending application(s) if any also stand(s) disposed of.

08.05.2026
Sunena

(Nidhi Gupta)
Judge

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