

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****112****RSA-2858-2023 (O&M)****Date of decision: 16.01.2026****Dalbir****...Appellant(s)****Vs.****Yashpal and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. B.S.Walia, Advocate and
Mr. Deep Inder S. Walia, Advocate
for the appellant.

NIDHI GUPTA, J.**CM-10043-C-2023**

Prayer in this application filed under Section 5 of the Limitation Act, 1963 is for condonation of delay of 2 days 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, the same is allowed and delay of 2 days in filing the appeal is condoned.

CM-10044-C-2023

Prayer in this application filed under 151 CPC read with Section 5 of Limitation Act, 1963 is for condonation of delay of 734 days in refileing the appeal.



2. The only reason cited by learned counsel for the applicant/appellant in the abovesaid application for condonation of 734 days delay in refiling the appeal is as under:-

“3. That as on 03.06.2019, there was summer vacations upto 30.06.2019, the RSA remained in office of the Registry during this period. When the brief was brought by the clerk of the undersigned after opening of the Hon'ble High Court, it was found that last seven pages of the brief including power of attorney were found missing. Accordingly, letter was written to the appellant for sending fresh power of attorney and accordingly it took considerable time. As the fresh power of attorney was sent by the appellant, the RSA is being refilled in this Hon'ble High Court on 16.12.2019. Thereafter, registry again raised certain objections on 20.01.2020. Thereafter, due to outbreak of Covid-19, the file of misplaced in the office by the clerk as termites had destroyed the office wood work as well as the files. Due to this very reason, the file got misplaced and thus, in this process there occurred delay of 734 days in refilling the present appeal.”

3. The said reason is vague and does not constitute sufficient cause to condone extraordinary delay of 734 days in refiling the present appeal.

4. It is cardinal principle of law that delay of each day has to be explained. In this regard, reference may be made to a recent judgment of the Hon'ble Supreme Court in **Civil Appeal No. 11794 of 2025** titled as **Shivamma (Dead) by LRs Vs. Karnataka Housing Board and others, 2025 INSC 1104 decided on 12.09.2025, Law Finder Doc Id # 2777666**, wherein it is held that each day's delay has to be explained in a mathematical manner



which has not been done by the applicant-appellant. No cogent reason or plausible explanation has been furnished by the applicant for condonation of such an inordinate and unexplained delay in filing the accompanying appeal. Moreover, condonation of such an inordinate delay would be tantamount to declaring the law of limitation obsolete/redundant, without any justification.

5. As such, no ground is made out for condoning inordinate delay of 734 days. Present application accordingly stands **dismissed**.

RSA-2858-2023 (O&M)

Present Second Appeal has been filed by the plaintiff No.1 against the concurrent judgments and decrees of the learned Court below; whereby the suit filed by the plaintiffs/appellant and performa respondents No. 8 to 10 herein, for declaration with consequential relief of injunction, has been dismissed by both the Courts below.

2. It is *inter alia* submitted by learned counsel for the appellant that defendant No.6/respondent No.6, namely, Ram Kali, was owner in possession of agricultural land measuring 17K-16M/suit property. Ram Kali is the mother of the plaintiffs. She was earlier married to Surjan. Out of the said wedlock, no child was born and Surjan had died. Thereafter, Ram Kali had solemnised kareva marriage with Arjan, adopted son of Inder. Out of kareva marriage of Ram Kali with Arjan, plaintiffs were born. It was pleaded that the plaintiffs being sons and daughters of Ram Kali, was entitled to inherit suit property after her death; and that Ram Kali had no right to further transfer her share of the ancestral land to someone else. It



is further pleaded that plaintiffs are in actual physical and cultivating possession of suit property. However, in October 2008, plaintiffs had discovered that Ram Kali had alienated the suit property in favour of defendant No.1- Yash Pal, defendant No.7-Arjan Singh and predecessor-in-interest of defendants No.2 to 5, namely, Puran Singh vide Collusive Consent Decree dated 13.03.1987 passed in Civil Suit No. 547 of 1986. It was discovered that pursuant to the Consent Decree, Mutation No. 1283 dated 21.06.1993 has also been sanctioned in a secret manner in collusion with revenue authorities. It is only in October 2008, when defendants No. 1 to 5 had threatened to dispossess plaintiffs from the suit property, the plaintiffs came to know about the Decree dated 13.03.1987. Accordingly, present suit was instantly filed on 10.2.2009.

3. Learned counsel submits that the suit property being ancestral, Ram Kali was not competent to transfer the same by Collusive Decree. As such, Collusive Decree does not confer any right or title of defendant No.1 to 5. Plaintiffs had duly proved their case by leading cogent evidence which has been ignored by learned Courts below. On the other hand, defendants, except for the self-serving statement of Yash Pal DW1 had led no evidence to prove their case. Plaintiffs had duly proved the kareva marriage of Ram Kali with Arjan. It is repeatedly submitted by learned counsel for the appellant that if the property was not ancestral in nature, then why would Ram Kali transfer the same to her brother-in-law. As such, plaintiffs are rightful owners of the suit property. It is accordingly



prayed that the impugned judgments and decrees suffer from material error and deserve to be set aside.

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

5. First and foremost, it needs to be pointed out that declaration in respect of the Decree dated 13.03.1987 and Mutation dated 21.06.1993 was sought by the plaintiffs vide present suit instituted on 10.02.2009. Clearly, suit of the plaintiffs was barred by limitation.

6. It has further come on record that Decree dated 13.03.1987 was suffered between defendant No.1- Yash Pal, defendant No.7-Arjan Singh, predecessor-in-interest of defendants No.2 to 5, namely, Puran Singh and Ram Kali, which was a Consent Decree on the basis of compromise. A Consent Decree can be assailed only on ground of fraud and misrepresentation. Admittedly, plaintiffs in their plaint have made no pleading of fraud and misrepresentation in respect of the Decree dated 13.03.1987. The only ground on which Decree dated 13.03.1987 had been challenged by the plaintiffs is that Ram Kali is not competent to execute the same. However, the said ground is not available to the plaintiffs as a Consent Decree cannot be assailed on merits; and can only be challenged on ground of fraud and misrepresentation; which had admittedly not been pleaded by the plaintiffs in their plaint. Even otherwise, the plaintiffs have not produced even an iota of evidence to show that Decree dated 13.03.1987 was a result of collusion between



Ram Kali and the other defendants. Competency of Ram Kali to transfer the suit property already stood adjudicated upon and decided by the Court which passed Decree dated 13.03.1987. The said issue cannot be reopened and reassessed by the Trial Court in the present suit.

7. Furthermore, it has been alleged that the suit land was ancestral in nature. However, plaintiffs have not led any evidence whatsoever to prove the ancestral nature of the property. On the contrary, the fact that Ram Kali was owner in possession of the suit property was proved from voluminous revenue record in the form of Ex.P20 to Ex.P23, which is Jamabandi for the year 1976-1977; Ex.P24 to Ex.P26 Jamabandi for the year 1981-1982; Ex.P27 to Ex.P29 Jamabandi for the year 1986-1987; Ex.P30 to Ex.P32 Jamabandi for the year 1991-1992. The plaintiffs have not brought any evidence to prove that kareva marriage was performed between Ram Kali with Arjan; or that the plaintiffs were born out of the said wedlock. It has come on record that Ram Kali had inherited the suit property from Surjan in an absolute manner. It has further come on record that plaintiffs are children of Arjun and have no connection with Surjan. Therefore, the property acquired by Ram Kali from Surjan was not ancestral property. Thus, plaintiffs failed to prove that they had right over the suit property; or that Ram Kali was not competent to dispose of the suit property in any manner she thought fit.

8. Learned counsel for the appellant is unable to dispute or controvert the above said factual position.

9. In view of the above, no ground is made out to interfere in the concurrent judgments and decrees, and findings of fact of the learned Courts below. The present Regular Second Appeal is accordingly **dismissed** on merits, as well as on grounds of delay.
10. Pending applications, if any, stand disposed of.

16.01.2026

Divyanshi

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No

(NIDHI GUPTA)

JUDGE