



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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RSA-3201-2023(O&M)
Date of decision: 20.05.2026

Amarjit Kaur

...Appellant(s)

Vs.

Paramjit Singh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ashish Gupta, Advocate
for the appellant.

NIDHI GUPTA, J.
CM-11451-C-2023

This is an application under Section 151 CPC for condonation of
delay of 407 days in re-filing the appeal.

It is mentioned in Para 1 of the present application that:-

"1. That the present appeal was filed on 23.05.2022 as ordinary. Certain objections were raised by the Registry of this Hon'ble Court on 29.06.2022 and the appeal ought to have been refiled within a period of 40 days i.e. on or before 08.08.2022. In fact, the dispute in the present litigation is between the nephews and their aunt i.e. close relatives and after the filing of the abovesaid RSA, the undersigned counsel was instructed by the appellant that certain compromise talks were going on between the parties and the re-filing of the present appeal was kept pending. The said compromise talks went on continuing up to 16.09.2023 and finally



the compromise could not be matured and on 17.09.2023, the appellant had instructed the counsel to refile the same. As such, the present appeal is being re-filed. Thereafter, after doing the needful, the present appeal is being re-filed along with delay of 407 days which is neither intentional nor willful nor mala fide rather the same has occurred due to above said bona fide reasons and the same may be condoned in the interest of justice.”

The above cited reason does not constitute sufficient cause to condone extraordinary delay of 407 days in re-filing the present appeal. As such, the sole reason cited by the appellant is not sufficient ground to condone extraordinary delay of 407 days in re-filing the appeal. Moreover, it is cardinal principle of law that delay of each day has to be explained. Reliance is placed upon 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 407 days. Present application accordingly stands **dismissed**.

MAIN CASE

Present Second Appeal has been filed by defendant No.2 laying challenge to the judgment of reversal dated 15.07.2021 passed by learned District Judge, Moga whereby suit filed by the respondents No.1 to 4 herein/plaintiffs for declaration and permanent injunction, although dismissed by the learned trial Court, has been decreed in appeal filed by the plaintiffs.



2. Brief facts of the case are that the plaintiffs/respondents No.1 to 4 herein had filed Civil Suit seeking decree of declaration as owners in possession by way of inheritance of the suit land measuring 9K as per Jamabandi for the year 2011-12 as described in the plaint/ suit property, of their deceased uncle namely Maghar Singh, who died wifeless and issueless. Plaintiff claimed the estate on the basis of registered Will No.249 dated 19.12.2008 executed by Maghar Singh in their favour in regard to the suit property, as per which plaintiffs are owners in possession of 9 kanal land; **and** for declaration that Mutation of Inheritance No.5614 is liable to be entered and sanctioned in favour of the plaintiffs on the basis of above-said Will dated 19.12.2008; **and** for declaration that defendants have no right, title or interest in the estate of Maghar Singh i.e. suit property; **and** for permanent injunction restraining the defendants No.1 and 2 from alienating, disposing of, selling, transferring etc. of the suit property, illegally or forcibly.

3. It was the pleaded case of the plaintiffs that suit property was previously owned by their uncle Maghar Singh who had died issueless on 26.09.2011. Defendants No.1 and 2 are his sisters. Defendant No.3 is the brother of Maghar Singh. Plaintiffs are the nephews of Maghar Singh. During his lifetime, Maghar Singh used to reside with plaintiffs and defendant No.3 and they used to serve him. Ration Card and Voter Card of Maghar Singh are with the plaintiffs. Due to services rendered by the plaintiffs, Maghar Singh had executed a registered Will No.249 dated 19.12.2008 in favour of the



plaintiffs in respect of his entire estate/suit property. Consequentially, upon his death, the plaintiffs had got entered Mutation No.5614 of Inheritance of Maghar Singh on the basis of above-said Will dated 19.12.2008. Defendants No.1 and 2 had raised objection and made false allegation that Maghar Singh had cancelled the Will vide Cancellation Deed dated 17.08.2011. Defendants No.1 and 2 had claimed that therefore they had inherited the suit property on the basis of natural succession. The plaintiffs had further pleaded that the suit property always remained in actual physical cultivating possession of the plaintiffs. Plaintiffs had made various requests to the defendants to admit their rightful claim and the Revenue Record. Defendant No.3 had admitted the claim of the plaintiffs, but defendants No.1 and 2 had refused to admit the claims of the plaintiffs. Hence, present Suit was filed on 01.02.2016.

4. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, the Id. Civil Judge (Junior Division), Moga had dismissed suit of the plaintiffs vide judgment and decree dated 07.07.2018 holding that plaintiffs were unable to prove that Maghar Singh was owner of the suit property as plaintiffs had been unable to prove death of father of Maghar Singh, namely Jangir Singh.

5. However, Civil Appeal filed by the plaintiffs was accepted by the Id. District Judge, Moga and suit of the plaintiffs came to be decreed vide impugned judgment and decree dated 15.07.2021 as follows:-



“32. In view of my above discussion, the appeal is hereby accepted and consequently, the judgment and decree passed by the learned lower court are hereby set-aside. The plaintiffs are held entitled to 9 kanals as detailed in the head note of the plaint and that defendants have no right, title or interest in the estate of deceased Maghar Singh. Plaintiffs are also held entitled for decree of permanent injunction restraining the defendants no.1 and 2 from alienating and disposing of any part of suit property in any manner and from dispossessing the plaintiffs from the suit property without due course of law. Decree sheet be drawn accordingly. Trial court file along with copy of this judgment be sent back. Appeal file be consigned to the record room.”

6. Hence, present second appeal by the defendant No.2.
7. Ld. counsel for the appellant assails the impugned judgment and decree by firstly submitting that the trial Court had discarded the Will dated 19.12.2008 allegedly executed by Maghar Singh on account of the fact that Maghar Singh/executant was not found to be owner of the suit property. Moreover, defendants had duly proved execution of Cancellation Deed (Ex.DW1/A) by Maghar Singh. Thus, the Will dated 19.12.2008 was rendered nugatory. However, this aspect of the matter has not been dealt with by the First Appellate Court while passing the impugned judgment and decree.
8. It is submitted that along with their Civil Appeal, the plaintiffs had moved an application for additional evidence under Order 41 Rule 27 read with Section 151 CPC, which had been allowed by the learned First Appellate Court vide order dated 22.01.2021 i.e. prior to passing of the impugned judgment



and decree dated 15.07.2021. Learned counsel contends that as per established position in law an application under Order 41 Rule 27 CPC is to be decided along with the main appeal. It is contended that the impugned judgment and decree deserve to be set aside on the short ground itself.

9. It is further submitted that the appellant was proceeded against ex parte vide order dated 09.07.2019, which is also being challenged now by the appellant in the present RSA. It is contended that the First Appellate Court in proceeding ex parte against the appellant failed to appreciate that the appellant had been pursuing the case before the learned trial Court. After the decision of the Civil Suit on dated 07.07.2018, the appellant had left for Canada. The perusal of the plaint or the memo of parties of the learned trial Court reveals that the address of the appellant Amarjit Kaur was of village Mala Chauntra, Post Office Doad, Tehsil Jaitu, District Faridkot and she was at that time served at the said address. The same address was given at the time of filing of the appeal. But, somehow at the first instance the summons was issued at her address of native place i.e. Village Datta, Tehsil Dharamkot, District Moga. But vide report of the said Server dated 11.10.2018, it was reported that she is now married and is residing in her matrimonial home. Thereafter, fresh service was ordered at her address of village Mala Chauntra. Vide report dated 27.12.2018 of the Process Server, it has been categorically reported that the appellant Amarjit Kaur is now residing abroad. The plaintiffs, who are none other than the nephews of the present appellant, were well



aware of the factum of residing of the present appellant abroad as well as her address over there but no such fresh address was provided. Even the learned lower Appellate Court had issued publication orders at the same given address of village Mala Chauntra and the publication was done so at the given address. Once it has come on the record that the appellant is residing abroad then the publication at the address of her matrimonial village cannot be termed to be valid service. In view of the above facts, the present appeal may be allowed, and the matter may be remanded to the learned First Appellate Court by affording opportunity of being heard to the appellant and pass afresh orders. It is accordingly prayed that the present appeal be allowed with costs and impugned judgment and decree passed by learned First Appellate Court be set aside; and that of learned trial Court be upheld and Suit filed by the plaintiffs/respondents No.1 to 4 be dismissed with costs.

10. 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.

11. The contention of the appellant that the Will had been discarded by the learned trial Court as Maghar Singh was not found to be owner of the suit property, is misleading as the defendants had themselves admitted that Maghar Singh was earlier owner in possession of the suit property. Admittedly, defendant No.2/appellant has not denied ownership of Maghar Singh in his written statement. Rather he has admitted that Maghar Singh was owner of



suit property during his lifetime. However, learned trial Court had incorrectly held that the said admission was not sufficient to prove ownership of Maghar Singh over the suit property; and that plaintiff was required to prove on record documents showing death of Jangir Singh whereafter Maghar Singh had inherited the estate of Jangir Singh. Firstly, the said reasoning of the trial Court is flawed as it is established tenet of law that, admission is the best evidence. Reference is made to a judgment of Hon'ble Supreme Court in **Mritunjoy Sett v. Jadunath Basak (D) by Lrs. (SC) : Law Finder Doc ID # 252882**, wherein it is held that:-

“16. In the light of Respondent's own admission, it leaves no doubt in our mind that it will hold good as long as it was not withdrawn or clarified by him. It is too well settled that an admission made in a court of law is a valid and relevant piece of evidence to be used in other legal proceedings. Since an admission originates (either orally or in written form) from the person against whom it is sought to be produced, it is the best possible form of evidence. In the factual context of this case, it may also be noted here that the 'rent receipts' issued by Smt. Kamala Sett, the predecessor-in-interest of the Appellant herein, being the documentary evidence adduced by the Respondent to prove his contention that the tenancy was as per the Bengali Calendar, was never substantiated by the witness' testimony of the abovenamed Smt. Sett in the course of hearings.”



12. Secondly, by way of additional evidence, the plaintiffs have duly placed on record Death Certificate of Jangir Singh and Revenue Record to show that after death of Jangir Singh, Maghar Singh had inherited the suit property. Jangir Singh had died on 07.01.2011 was proved from his Death Certificate (Ex.P8). As per Mutation No.5579 (Ex.P10), Maghar Singh along with other legal heirs had inherited the property of Jangir Singh measuring 90 kanal 7 marla up to the extent of their respective shares. By way of additional evidence plaintiffs had also produced certified copies of the Jamabandi for the year 2006-07; Jamabandi for the year 2011-2012; and Mutations No.5579 and 5614 from which it was established that Maghar Singh and before him, his father Jangir Singh were owners in possession of the suit property. The said documents were taken on record by way of additional evidence. The plaintiffs pointed out that discrepancy had occurred in the record due to clerical mistake.

13. Contention of the appellant that application under Order 41 Rule 27 CPC is to be decided along with the main appeal, is misconceived. There are conflicting judgments of the Hon'ble Supreme Court on the issue. In the case of **North Eastern Railway Administration, Gorakhpur v. Bhagwan Das (D) By Lrs, (SC) : Law Finder Doc Id # 143877** the Apex Court had held that application submitted under Order 41 Rule 27, CPC had to be decided first before taking up the appeal on merits. In this regard, it is also necessary to point out that the said Jamabandis and Mutations produced by the plaintiffs by way of additional evidence are public documents which cannot be fabricated and the same were



in existence even during pendency of trial. For this reason as well, no error can be found in the order dated 22.01.2021 passed by learned District Judge, Moga while allowing the application of the respondents under Order 41 Rule 27 CPC. Thus, Maghar Singh was duly proved to be owner in possession of the suit property; and therefore, he was competent to execute the impugned Will.

14. The Will dated 19.12.2008 executed by Makar Singh in favour of the plaintiffs was proved by the plaintiffs by examining the Attesting Witness namely Sampuran Singh Numberdar as PW1 who had categorically deposed on oath that Maghar Singh had executed Will dated 19.12.2008 in favour of the plaintiffs. PW1 had further deposed that the said Will was scribed by Deed Writer Varinder Kumar as per instructions of Maghar Singh, who had executed the same in his sound disposing mind and of his own free will and consent. Maghar Singh has himself identified his photo affixed on the back of certified copy of Will at Mark-Z while thumb-marking the Will in the presence of witnesses, which was affixed at the time of registration of the Will.

15. The plaintiffs had also examined PW3 Gurmeet Singh, another attesting witness of the Will who had corroborated the version of PW1. Thus, the Will stood proved in accordance with law.

16. Defendant No.2 has also relied upon Cancellation Deed (Ex.DW1/A). In this regard, contention of the appellant that the said Cancellation Deed (Ex.DW1/A) has not been dealt with by the learned First Appellate Court, is incorrect as the learned First Appellate Court has dealt with



the issue in detail, and has clearly held in Para 28 of the impugned judgment that the said Cancellation Deed relied upon by defendant No.2 could not be proved. Relevant findings returned by First Appellate Court in this regard are in Paras 28 and 29 of the impugned judgment dated 15.07.2021, as under:-

“28. The cross examination of this witness is relevant as he has replied to a specific question that he joined the Tehsildar at 4.00 p.m when he was in his office and the Will was already written by the scribe before he reached there. This reply given by DW3 shows that the cancellation deed Ex.DW1/A was neither scribed in his presence as alleged by him in his examination-in-chief nor was read over to him. He is giving contradictory statement to that of examination-in-chief. It is relevant to mention here that even in the examination-in-chief he has nowhere stated that he has seen the cancellation deed which bears thumb impressions of testator at certain point, Mere statement of DW3 that cancellation deed was executed in his presence is not sufficient to prove the due execution of the same. Similarly exhibition of a document does not amount to proof of its contents. The party relying upon said document has to independently prove its contents. Since DW3 has admitted in the cross-examination that it was already scribed when he reached the office of Sub Registrar and has thus stated contrary to what was stated by him in his examination-in-chief, the contents of the cancellation deed of Will remain unproved on the record. It is relevant to mention here that the other attesting witness has not been examined by defendant no.2. Although, it is not the requirement of law that both the attesting witnesses should be examined to prove the document but in the event of



examination of one attesting witness, the testimony of latter should inspire confidence and should be sufficient to prove the due execution of the document, which is lacking in the present case. Mere registration of the document is not sufficient to prove its due execution. Thus, this court has no hesitation in holding that the due execution of the cancellation deed remains unproved on record.

29. To add to it, it is relevant to mention here that DW3 has admitted in the cross-examination that the plaintiffs had love and affection with deceased Maghar Singh. They used to provide him food, medicines and other things. Even the ration card and voter card of Maghar Singh were with the plaintiffs. He has admitted it correct that cremation of Maghar Singh was also done by plaintiffs. His bhog ceremony and last rights were also performed by the plaintiffs and that the plaintiffs are in possession of the property since long during the life time of Maghar Singh. Not only DW3 has admitted the above said facts even DW2, the power of attorney of defendant no.2 has admitted in his cross-examination that ration card and voter card of Maghar Singh were with the plaintiffs and that the plaintiffs had performed the last rights of Maghar Singh. All this shows that till his death, testator Maghar Singh was looked after by the plaintiffs. There was no plausible reason for testator Maghar Singh to cancel the Will Ex.P1 executed in favour of plaintiffs. The case of the defendant No.2 is that Maghar Singh cancelled the Will Ex.P1 as plaintiffs stopped taking care of Maghar Singh but the above said replies given by DW2 and DW3 falsify the version of defendant no.2.”



17. Further, record reveals that the appellant was proceeded ex parte in the Civil Appeal by the First Appellate Court vide order dated 09.07.2019. On a Court query, learned counsel for the appellant has admitted that the said order has not been challenged heretofore; and has been challenged only in the present Second Appeal. Clearly therefore, challenge of the appellant to the said order dated 09.07.2019 is barred by limitation as ex parte order is required to be challenged within 30 days of its passing.

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

19. In view of the above discussion, present Second Appeal stands **dismissed** on grounds of delay as well as on merits.

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

20.05.2026
Sunena

(Nidhi Gupta)
Judge

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