**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****120****RSA-1442-2023 (O&M)****Date of decision: 16.02.2026****Chander Mohan****...Appellant(s)****Vs.****Pawan Kumar and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Onkar Rai, Advocate
for the appellant.

NIDHI GUPTA, J.**CM-5329-C-2023**

Prayer in this application filed under Section 151 CPC r/w
Section 5 of Limitation Act, 1963 is for condonation of delay of 285 days in
refiling the appeal.

2. The only reason cited by learned counsel for the
applicant/appellant in the abovesaid application for condonation of 285
days delay in refiling the appeal is as under:-

*"2. That present appeal was filed on 02.06.2022 and registry
raised some objections, thereafter, clerk of the counsel
collected the paper book, but inadvertently, he put in another
decided case i.e. CR 7995 of 2019 which was disposed of on
31.05.2022 by this Hon'ble Court. Thereafter, thorough search
was made to find the paper book. Now, it has been found, but
in this process delay of 285 days has been occurred. The delay*



in refilling the appeal is not intentional rather due to the facts stated above."

3. The said reason is vague and does not constitute sufficient cause to condone extraordinary delay of 285 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 285 days. Present application accordingly stands **dismissed**.

RSA-1442-2023 (O&M)

Plaintiff is in Second Appeal against the concurrent judgments and decrees of the learned District Courts; whereby the suit filed by the plaintiff for joint possession of suit land with consequential



relief of permanent injunction, has been dismissed by both the District Courts.

2. It was the pleaded case of the appellant in the plaint that Bagga Mal, was common ancestor of the parties and he was owner in possession of the suit land. After the death of Bagga Mal, the property had fallen to the share of Chiranji Lal, who was great grandfather of the plaintiff. It was alleged that on the death of Chiranji Lal, suit property devolved upon Ram Parkash by way of survivorship; whereafter Darshan Kumar/defendant No.5, Anoop Kumar/defendant No.2, Ramesh Kumar/defendant No.4 and Pawan Kumar/defendant No.1 i.e. all sons of Ram Parkash son of Chiranji Lal; and Kamal Kumar inherited the suit property. It was averred that plaintiff is the son of Darshan Kumar; and grandson of Ram Parkash and is therefore one of the coparceneres and is entitled to his share in the suit property. It was alleged that however, defendant No.1/Pawan Kumar is alleging one Will dated 21.01.1999 in his favour, which is forged. Hence, present suit was filed for joint possession with consequential relief of permanent injunction on 22.05.2007.

3. Upon appraisal of the pleadings and the evidence led by the parties, the learned Additional Civil Judge (Senior Division), Shaheed Bhagat Singh Nagar dismissed the suit of the plaintiff vide judgment and decree dated 05.02.2015. The Civil Appeal filed by the plaintiff was dismissed by the Additional District Judge, Shaheed Bhagat Singh Nagar vide judgment and decree dated 23.02.2022. Hence, present second appeal by plaintiff.



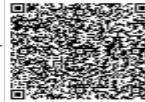
4. It is *inter alia* submitted by learned counsel for the appellant that the learned District Courts were in error in non-suiting the appellant as they failed to appreciate that the appellant had duly proved the coparcenary nature of the suit property. It is submitted that from the head note, prayer, and contents of the plaint, it was clear that plaintiff was in possession of the suit land on the strength that suit land is joint Hindu family coparcenary and ancestral property and Bagga Mal was common ancestor of the parties. It is submitted that therefore, it was incumbent upon the learned Trial Court to frame the issue in this regard. However, despite specific pleadings by the plaintiff to the effect that the suit property is coparcenary in nature, no such issue was framed by learned District Courts. The appellant had also filed an application before the learned First Appellate Court for framing of additional issue with regard to joint Hindu family coparcenary and ancestral property. However, the said application of the appellant was also dismissed vide order dated 23.02.2022 (Annexure A-3). Learned counsel contends that in terms of Order 14 Rule 1,3 and 5 of CPC, it was incumbent upon the Trial Court to frame necessary issue in this regard. It is argued that Order 14 Rule 1, 3 and 5 CPC empowers the Court to amend framed issues or frame additional issues at any stage of proceedings. However, this provision has not been correctly appreciated by First Appellate Court. As such, order dated 23.02.2022 is not sustainable.

5. Learned counsel further argues that in the absence of any specific denial by the respondents/defendants in the written statement,



averments made in the plaint shall be taken to be admitted in terms of Order 8, Rule 3, 4 and 5 of CPC. It is pointed out that in the plaint, appellant has specifically pleaded that suit land is joint Hindu family coparcenary property; and the same has not been specifically denied by the respondents in the written statement. Rather their stand was evasive. It is submitted that although all the aforesaid points were raised by the appellant before the learned District Courts supported by law but the same were not dealt with while passing impugned judgments and decrees.

6. Learned counsel further submits that the appellant had also placed on record substantial documentary evidence in the form of Jamabandi for the year 2000-2001 Ex.P1; Jamabandi for the year 2003-2004 Ex.P2; Jamabandi for the year 1983-84 Ex.P4; Jamabandi for the year 1998-99 Ex.P5; Jamabandi for the year 1985-86 Ex.P6; Khatauni Ishtamal Ex.P9; Khatauni Paimiash Ex.P10; and Naksha Haqdawar Ex.P11; which duly proved that Bagga Mal was original owner of suit land and land has come from four lineal descendants in unbroken line. This fact is strengthened from Ex. P15, Excerpt/detailed report which was duly proved by PW1 Vijay Kumar, Kanungo, DC office, Jalandhar. However, no document had come on record from respondents/defendants side in order to disprove nature of suit land as claimed by appellant. The impugned judgments and decrees are, therefore, contrary to evidence available on record.



7. Learned counsel for the appellant further submits that learned District Courts have heavily relied upon Will dated 21.01.1999 executed by Ram Parkash in favour Pawan Kumar and tried to distract and ignore the basic concept raised by appellant i.e. Joint Hindu Family Property in his suit. However, respondents/defendants failed to prove the Will. Although, they produced one attesting witness i.e. Gurmail Singh son of Kehar Singh as DW2 but he failed to dispel suspicious circumstances surrounding the Will. The other attesting witness was withheld by respondents and not examined for the reason best known to them. Hence, impugned judgments and decrees are illegal and against the provision of Indian Evidence Act.

8. It is accordingly prayed that the present Appeal be allowed; and the impugned judgment and decree dated 05.02.2015 passed by learned Trial Court and the impugned judgment and decree dated 23.02.2022 passed by learned First Appellate Court be set aside and suit of the plaintiff may be decreed with cost throughout, in the interest of justice

9. 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.

10. Perusal of the record of the case shows that concurrent findings of fact have been returned by both the District Courts that appellant had failed to prove the ancestral nature of the suit land as alleged. No doubt, appellant had produced PW1 Vijay Kumar, Kanungo,



DC office, Jalandhar, who had prepared the Excerpt/Report Ex.P15 in respect of the suit property as per which the property had devolved upon Ram Parkash through male lineal ascendants. Vijay Kumar had deposed that he had prepared his Report Ex.P15 on the basis of Jamabandi for the year 2003-2004 and Parat Patwar of the year 1998-1999. However, it is further to be seen that as per the Jamabandi for the year 1983-1984, an exchange had taken place between Darshan Kumar and Ram Parkash vide mutation No. 1985. The record further reveals that vide Mutation No. 1651, a counter entry regarding exchange between Darshan Kumar and Ram Parkash was made. However, these facts were not disclosed by the plaintiff in the plaint. Thus, plaintiff did not come to Court with clean hands. However, plaintiff while appearing as PW2 has not denied the factum of exchange. It may also be pointed out that Plaintiff himself had relied upon Jamabandi for the year 1983-1984 and 1985-1986 which reflected the exchange between Ram Parkash and Darshan Kuman. However, the said documents were not exhibited though they were available on record in original. More importantly, plaintiff had failed to examine his father Darshan Kumar/defendant No.5 to refute the said facts. From these facts, it was proved that suit property was not ancestral in nature.

11. The record further shows that there was already litigation pending between the parties qua the same suit land. However, no mention of the same was made by the plaintiff in the present plaint. It has also come on record that sons of Ram Parkash were having separate mess



and were residing separately for the past several years. Even further, plaintiff in his evidence as PW2 has admitted that he is in separate possession and ownership of some part of the suit property. Plaintiff has also admitted that all sons of Ram Parkash are having separate mess and residing separately for the past several years. Thus, from the pleadings and evidence of the plaintiff himself, it is proved that there is no joint Hindu family coparcenary property in existence and there is no joint Hindu family as asserted.

12. Furthermore, PW1 had prepared Excerpt/Report Ex.P15 to prove the ancestral nature of the suit property. However, none of the khasra nos. shown in the Report Ex. P1 and Ex.P2 match with the heading of the plaint. As per the interrogatories prepared by the revenue department and forwarded to the learned Trial Court vide Excerpt Report Ex.P15, the suit land had been purchased by Ram Parkash from different persons. As such, property could not be held to be joint Hindu family coparcenary property as the same was not inherited by the parties from his forefathers.

13. In view of the fact that plaintiff had failed to establish the nature of the suit property as ancestral, his challenge to the Will dated 21.01.1999 in favour of Pawan Kumar, does not hold any ground.

14. Learned counsel for the appellant is unable to dispute or controvert the above said facts and findings.

15. 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.

16. Pending applications, if any, stand disposed of.

16.02.2026

Divyanshi

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No

(NIDHI GUPTA)

JUDGE