

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****128****RSA-2218-2025 (O&M)****Date of decision: 30.04.2026****Ram Singh and another****...Appellant(s)****Vs.****Sher Singh (deceased) through his LRs and others ...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. R.S.Manhas, Advocate
for the appellants.

NIDHI GUPTA, J.

Defendants No.1 and 2 are in Second Appeal seeking setting aside of the judgment and final decree dated 28.02.2024 passed by the Ld. Additional Civil Judge (Senior Division) Pathankot; and order dated 27.05.2025 passed by the Ld. District Judge, Pathankot; whereby application filed by the appellants for condonation of delay in filing the appeal against the above said final decree, has been dismissed.

2. Brief facts of the case in chronological order are as follows: -

31.05.2014: The plaintiffs/respondents No.1 to 11 had filed Civil Suit No. 576 dated 31.05.2014 for partition by metes and bounds of the suit land as described in the plaint total measuring 1K-14M and for permanent injunction.

07.07.2017: In the said Civil Suit, a Preliminary Decree dated 07.07.2017 was passed.



24.10.2017: Thereafter, decree holders had filed application dated 24.10.2017 before the learned Additional Civil Judge (Senior Division) Pathankot for passing of final decree.

19.11.2019: In the said application, except for judgment debtor/respondent No.2, the remaining judgments debtors were proceeded against exparte vide order dated 19.11.2019.

In the reply filed by defendant No.2, objection was taken that decree holders had sought partial partition and other co-owners were not impleaded. It was further averred that decree holder was having property with judgment debtors measuring 18K of gair mumkin abadi and land measuring 44K 19M. Other averments made in the application for passing of final decree were denied and dismissal of application was prayed for.

09.05.2023: As such, to ascertain the mode of partition of suit property, revenue official Halqa Kanungo was appointed as Local Commissioner by learned Civil Court vide order dated 09.05.2023.

16.8.2023: The Halqa Kanungo had submitted his Report dated 16.08.2023.

12.02.2024: Judgment debtor/appellant No.2 herein, namely, Kesar Singh had also filed his objections to the said Report, which were allowed after due contest by the Civil Court vide order dated 12.02.2024 and, another Report of Local Commissioner was called for.

26.02.2024: Thereafter, Local Commissioner had submitted his fresh Report on 26.02.2024.



28.02.2024: Pursuant thereto final decree came to be passed vide judgment dated 28.02.2024.

13.03.2025: Against the same, appellants i.e. defendants/judgment debtors No.1 and 2 had filed Appeal before the learned District Judge, Pathankot on 13.03.2025 alongwith the application for condonation of delay in filing the appeal.

27.05.2025: Vide the impugned order/judgment dated 27.05.2025, the said application of the appellants for condonation of delay of one year in filing the appeal has been dismissed; and as a consequence thereof, the appeal filed by the appellant against the final decree has also been dismissed.

3. Hence, the present Second Appeal by the appellants.

4. It is *inter alia* submitted by learned counsel for the appellants that learned First Appellate Court was in error in dismissing the application of the appellants for condonation of delay as there was delay of only 12 months in filing the appeal. It is submitted that moreover, the appellants had shown sufficient cause for the said delay in as much as the appellants had clearly pleaded that said delay had been caused “*due to wrong advise by the counsel who had misguided the appellants*”. It is submitted that previous counsel had informed the appellants that he has filed appeal against the preliminary decree and as such, first Appeal cannot be filed. It is submitted that it is only when the appellants received notice for execution then on enquiry, it transpired that no appeal has been filed by the counsel against the preliminary decree. It is only then the



appellants had contacted another counsel before the learned Trial Court, who had advised that appeal is now barred by limitation and that First Appeal be filed before the learned First Appellate Court alongwith application for condonation of delay; whereupon the appellants had filed the said proceedings on 13.03.2025. However, the same has been dismissed by the learned First Appellate Court without deciding the appeal on merits.

5. It is further submitted by learned counsel for the appellants that the Ld. First Appellate Court ought to have condoned the delay as the appellant No.1 is a poor rustic villager and is 90 years of age whereas the appellant No.2 is also 80 years old and as such could not file appeal within a period of limitation of 30 days and the explanation given by the appellants are true and correct which has been caused due to wrong advice of the previous counsel. The Ld. First Appellate Court dismissed the application for condonation of delay of 12 months in filing the appeal only in mechanical way whereas the First Appellate Court ought to have decided the first appeal on merits.

6. It is further submitted that objections of the appellants have not been considered while passing the preliminary decree. Learned District Courts have failed to appreciate that only partial partition has been done, which is not permitted as per law. Local Commissioner has partitioned the suit property as though it is agricultural land without appreciating that partition of abadi is to be done. It is contended that the constructed area including rooms have been partitioned to the other joint



landowners who have their own constructed area and they can be given other area rather than parting constructed house of the appellants. The partition has been done by totally ignoring the procedure and norms for partition abadi deh area, the revenue authorities are not competent enough to partition abadi which has been wrongly relied upon by the Ld. Trial Court while passing the final decree and as such the same is also liable to be set-aside.

7. It is accordingly prayed that the present Appeal be allowed; and judgment and final decree dated 28.02.2024 passed by the Ld. Addl. Civil Judge (Sr. Divn.) Pathankot be set-aside; and order dated 27.05.2025 passed by the Ld. District Judge, Pathankot in dismissing the application for condonation of delay in filing the appeal be set-aside; and the appeal be ordered to be heard on merits.

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

9. The only objection raised by the appellants to the final decree is that the suit is bad for partial partition. However, a perusal of the preliminary decree dated 07.07.2017 shows that in their written statement, no such objection had been raised by the appellants that the suit was bad for partial partition. Accordingly, even no issue was framed by the learned Trial Court in this regard. It is only thereafter, that the preliminary decree dated 07.07.2017 came to be passed.



10. Record further reveals that no appeal was filed by the appellant against the preliminary decree. At least, nothing to this effect has been brought to the notice of this Court by the Id. counsel for the appellant.

11. Accordingly, upon application by the decree holders, the final decree dated 28.2.2024 was passed by the learned Additional Civil Judge (Senior Division), Pathankot. A perusal of the final decree dated 28.02.2024 shows that appellants had duly raised the objection before the Civil Court that suit was bad for partial partition. The said objection has been dealt with in detail by the Civil Court in paras 7 and 8 of the judgment dated 28.02.2024, which read as under: -

"7. With regard to the only objection raised by respondents in their reply that the suit was bad for partial partition, it is suffice to hold that from the judgment passed by learned Predecessor of this Court it is revealed that the present respondents never raised any such objection with regard to partial partition at the time of filing written statement of that case as nothing of that sort has been mentioned in the judgment dated 07.07.2017. Further, the said judgment and decree has attained finality as there is nothing on record to show that any appeal has been preferred by the present JD/respondent against the said judgment and decree. Reliance in this regard is placed on judgment titled as Sankar Neogy and others Vs Swapna Neogy and others, CO 2633 of 2015 decided on 23.07.2015 in which Hon'ble Calcutta High Court has held that "where decree in both forms attained finality without any further challenge before the higher forum, Civil Court should not



adjudicate the issue more than one occasion and keeping the litigants in doldrums over the right, title and interest, in case of acceptance of objections it will open the Pandora's Box for an unscrupulous litigant to challenge the decree by instituting a frivolous suit creating a illusory cause of action with a clever draftsmanship and there shall not be any finality to the litigation- Revision dismissed."

8. *Further be it noted that as preliminary decree has already been passed in favour of the parties to the extent of their share in the joint suit land, which has been further reiterated by local commissioner in his supplementary report as well as site plan placed on record."*

12. As already noted above, against the abovesaid final decree, appellants had preferred First Appeal before the learned District Judge, Pathankot however, with a delay of one year on 13.03.2025. The only reason given by the appellants to explain the said inordinate delay of 12 months is that they were misguided by their counsel. However, said contention of the appellants is unacceptable as the entire sequence of facts noted hereinabove, reflects the careless attitude of the appellants; in as much as, no objection of partial partition was taken in the written statement; no appeal was filed against the preliminary decree dated 7.7.2017; and then even no appeal was filed against the final decree dated 28.2.2024 within limitation. In this situation, to seek to lay the blame at the door of the Id. counsel representing the appellants, is also uncalled for. In terms of recent judgment of the Delhi High Court in **Moddus Media Pvt. Ltd. v. M/s. Scone Exhibition Pvt. Ltd., (Delhi): Law Finder Doc Id #**



887148, duty lies upon the appellants to be vigilant towards their rights to pursue litigation diligently. The appellants cannot totally sleep upon the matter after allegedly entrusting the same to their counsel. The relevant para of the said judgment is as under:-

“11. The litigant owes a duty to be vigilant of his rights and is also expected to be equally vigilant about the judicial proceedings pending in the court of law against him or initiated at his instance. The litigant cannot be permitted to cast the entire blame on the Advocate. It appears that the blame is being attributed on the Advocate with a view to get the delay condoned and avoid the decree. After filing the civil suit or written statement, the litigant cannot go off to sleep and wake up from a deep slumber after passing a long time as if the court is storage of the suits filed by such negligent litigants. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory put forth by the appellant/applicant/defendant company, which cannot be accepted and ought not to have been accepted.”

13. The reasoning of the learned District Judge, Pathankot in the impugned order dated 27.05.2025 reads as follows: -

“10. Perusal of the record shows that there is delay of 12 months in filing the appeal against the judgment and final decree passed on 28.02.2024 by the court of Ms. Dazy Bangarh, the then learned Additional Civil Judge (Senior Division), Pathankot, in case bearing CIS No.CM/516-2017, CNR No.PBPO02-001125-2017 titled as 'Sher Singh through his legal heirs Sadhna Devi and others vs. Ram Singh and others'. The copies of judgment and final decree sheet were



applied on 14.02.2025, which were also prepared on 14.02.2025 and its copies were delivered on 20.02.2025. The present application along with appeal was filed on 13.03.2025. Hence, there is delay of 12 months.

11. As it is pleaded that applicant was misled by his previous counsel who kept on telling the applicant that since the appeal against the preliminary decree is pending, therefore, there was no need to file the appeal against final decree. The reason mentioned seems to be flimsical as affidavit of the counsel who was telling that there was no need to file appeal has not been filed. It shows that the plaintiff is hand in glove with the previous counsel. Accordingly, the instant application moved by applicants-appellants for condonation of delay stands dismissed being without merit. File be consigned to the record room.”

14. I am in complete agreement with the above said reasoning. Learned counsel for the appellants is unable to controvert or dispute the above said facts and findings.

15. In view of the above, the present Regular Second Appeal is hereby **dismissed**.

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

30.04.2026
Divyanshi

(NIDHI GUPTA)
JUDGE

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