

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****225****RSA-4445-2016 (O&M)****Date of decision: 28.04.2026****Shakuntla and others****...Appellant(s)****Vs.****Mehar Singh****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Rakesh Bakshi, Advocates
for the appellants.

Mr. Sanjay Verma, Advocate
for the respondent.

NIDHI GUPTA, J.**CM-11603-C-2016**

Prayer in this application filed under Section 5 of the Limitation Act is for condonation of delay of 132 day in filing the accompanying appeal.

2. Heard.

3. For the reasons mentioned in the application which is duly supported by affidavit of the applicant/appellant No.2, the same is allowed and delay of 132 day in filing the accompanying appeal is condoned.

RSA-4445-2016 (O&M)

Defendants are in Second Appeal against the concurrent judgments and decrees of the learned District Courts, whereby suit filed



by the plaintiff/respondent for separate possession, has been decreed by both the District Courts.

2. It was the pleaded case of the plaintiff that property in dispute is owned by his father Kalu, who had expired about 15 years ago leaving behind the plaintiff and defendants as his legal heirs. It was contended that after the death of Kalu plaintiff is owner to the extent of 1/3rd share in the disputed property which is in joint possession of the parties. Plaintiff had previously filed Civil Suit No. 420 of 2001 for permanent injunction against the defendants No. 1 to 3 for the Bara in dispute bearing Khasra No. 136 restraining them from raising any construction on specific portion. The said suit had been decreed in favour of the plaintiff vide judgment and decree dated 04.05.2007. The appeal filed by defendants No.1 to 3 had been partly accepted and partly dismissed; and plaintiff was held to be owner to the extent of 1/3rd share in the suit property. It was averred that plaintiff had requested defendant several times to partition the property in dispute by metes and bounds and for separate possession but to no avail. Hence, present suit was filed on 04.03.2009.

3. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Junior Division), Yamuna Nagar at Jagadhri had decreed the suit of the plaintiff vide judgment and decree dated 28.01.2013. The Civil Appeal filed by the defendant No.2 was partly allowed by the learned District Judge, Yamuna Nagar vide judgment and decree dated 01.12.2015 as follows: -



“21. On conspectus of findings on the above issues, the present appeal is partly allowed and the impugned judgment and decree dated 28.01.2013 passed by the learned trial court is modified to the effect that the plaintiff is entitled for separate possession of his 1/3rd share only in the plot comprising of Khasra No. 136 by way of its partition by metes and bounds and he is not entitled for separate possession of any portion of residential house mentioned in the head-note of the plaint and shown situated within the Abadi-deh of village Fatehpur, Tehsil Jagadhri, District Yamuna Nagar. No order as to costs. Decree sheet be prepared accordingly. Lower court record along with a copy of this judgment be sent back. Appeal file be consigned to the record-room after due compliance.”

Hence, the present second appeal by the defendants.

4. It is *inter alia* submitted by learned counsel for the appellants that suit of the plaintiff could not have been decreed as plaintiff has failed to prove that he is son of Kalu. Plaintiff has failed to produce any reliable evidence to prove that he is son of Kalu. It is contended that in fact, plaintiff is son of Bhadu, who is previous husband of mother of the plaintiff. As such, plaintiff could not have been held to be entitled to share in the property of Kalu; and suit of the plaintiff ought to have been dismissed.

5. It is further submitted by learned counsel for the appellants that the Id. lower courts failed to frame the proper issues as per averments of the appellant as well as other defendants No.2 to 8 regarding partial partition inspite of the specific objection raised by them in their written statement; and also failed to consider the evidence adduced by the

appellant as well as other respondents in this regard. Thus, on account of



partial partition the suit of the plaintiff ought to have been dismissed but the learned lower court failed to consider this important aspect of the case.

6. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of the Id. District Courts be set aside.

7. Per contra, learned counsel for the plaintiff/respondent no.1 vehemently opposes submissions advanced on the appellants and takes this Court through the findings of fact rendered by both the District Courts to the effect that plaintiff was proved to be son of Kalu; and also held entitled to partition of the suit property by metes and bounds. He accordingly prays for dismissal of the present Appeal.

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

9. Perusal of the record of the case shows that through the present civil suit, plaintiff had sought partition of Bara measuring 0K-5M, as well as residential house, by metes and bounds. As already noted above, suit of the plaintiff was decreed by the learned trial court; which was modified by the first Appellate court to the extent that plaintiff was held entitled to partition of only the Bara comprising in Khasra no. 136.

10. It has been contented on behalf of the appellant that plaintiff is not the son of Kalu. However, plaintiff has produced sufficient documentary evidence in the form of Voter lists Ex.P-6 and Ex.P-7, and Ration Card Ex.P-8,



wherein name of father of plaintiff is shown to be Kalu. No evidence to the contrary has been brought to the notice of this Court by the appellant.

11. Further, it is undisputed that in the previous Civil Suit No. 420 of 2001 filed by the plaintiff for permanent injunction, plaintiff was found to be owner in possession of suit property to the extent of 1/3rd share vide judgment and decree dated 04.05.2007 Ex.P2 and Ex.P3 respectively passed by learned Additional Civil Judge (Senior Division), Jagadhri. Property in dispute was also found to be ancestral in nature on the basis of Jamabandi for the year 2003-2004 Ex.D3. As per the said documents, the property was shown to be inherited by Kalu from his father. In the Jamabandi for the year 2003-2004 Ex.P1, in the column of ownership, name of deceased Kalu has been mentioned, who has inherited the property from his father.

12. Even further, Defendants had failed to lead any evidence that the suit property has been partitioned till date. Defendants also failed to lead any evidence to show that there was any other joint property between the parties. In fact, defendant did not even enter into witness box to prove that there are any other joint family properties which are not joined in partition. Accordingly, in the absence of any documentary or oral evidence, it cannot be presumed that deceased Kalu had left other properties, which are not joined in the present suit for partition. Thus, both of the above said contentions of the appellant are without merit and accordingly rejected.

13. Relevant findings of District Judge, Yamuna Nagar are contained in para 14 of the judgment dated 01.12.2015, which read as under: -



"14. It is not disputed that earlier the suit property was owned and possessed by Kalu since deceased. Entries in the jamabandi for the year 2003-04, copy of which has been placed on trial court record as Ex.P1, reveals that Kalu son of Ruhla was owner in possession of the plot comprising of Khasra No. 136. Mehar Singh plaintiff has claimed himself to be son of Kalu, but the defendants have denied his paternity stating that the plaintiff was son of one Bhadu and after the death of said Bhadu, the mother of the plaintiff had entered into Karewa marriage with Kalu. Jangsher, defendant No.1 and Gurmel Singh, predecessor of defendants No.2 to 8 were born out of this wedlock. In the voters lists for the year 1980 Ex. P6 and for the year 1975 Ex.P7 and ration card Ex. P8, the name of the father of plaintiff Mehar Singh has been mentioned as Kalu. It has been argued by learned counsel for the respondent No.1/plaintiff that during his life time, Kalu had given his properties in equal shares to his three sons namely Mehar Singh, present plaintiff/respondent No.1. Jangsher Singh, respondent No.2 and Gurmel Singh, predecessor of present appellant and respondents No.3 to 8. Perusal of judgment and decree dated 04.05.2007 Ex.P2 and Ex.P3 respectively shows that earlier plaintiff Mehar Singh had filed a suit for permanent injunction bearing No. 420 of 2001/2005 titled as Mehar Singh Vs. Jangsher and others for restraining the defendants Jangsher, Shakuntla and Sanjeev Kumar from interfering in his ownership and possession over 1/3rd share of plot measuring 05 Marlas bearing Khasra No.136, from raising any construction over whole of the plot and also from alienating any specific portion thereof. Said suit was ordered to be decreed vide judgment and decree dated 04.05.2007, copy of which have been placed on record as Ex.P2 and Ex.P3 respectively, passed by the court of Ms. Madhu Khanna, the then learned Additional Civil Judge



(Senior Division), Jagadhri observing therein that the plaintiff was being treated by Shri Kalu Ram as his son. Possession of the plaintiff over the suit property was established beyond any doubt and he was held entitled to protect his possession. Accordingly, the defendants were restrained from raising any construction over the suit property in excess of their 1/3rd share each and also restrained from interfering in the possession of plaintiff over 1/3rd share, which was in his possession. It is not disputed that the appeal filed against the judgment and decree dated 04.05.2007 Ex. P2 and Ex.P3, was ordered to be partly allowed vide judgment and decree dated 03.01.2009 Ex.P4 and Ex.P5 respectively passed by the court of Shri Darshan Singh, the then learned Additional District Judge, Yamuna Nagar at Jagadhri and the judgment and decree dated 04.05.2007 Ex.P2 and Ex.P3 passed by the court of Ms. Madhu Khanna, learned Additional Civil Judge (Senior Division), Jagadhri was ordered to be modified to the extent that the plaintiff/respondent was not entitled for injunction to restrain the appellants/defendants from interfering in possession over the Bara in dispute as they were co-sharers in joint possession of the said Bara and it was also observed that the remaining relief granted by the learned trial court does not call for any interference. Since none of the parties had preferred appeal against the judgment and decree dated 03.01.2009 Ex.P4 and Ex.P5 respectively, the same have attained finality. From the documents Ex. P2 to Ex.P5, the joint ownership as well as possession of the plaintiff alongwith Jangsher, defendant No.1 and Gurmel Singh, predecessor of defendants No. 2 to 8, to the extent of 1/3rd share each in respect plot bearing Khasra No. 136 has been proved. So, the learned trial court has rightly held the plaintiff/respondent No.1 Mehar Singh entitled for

separate possession of his 1/3rd share in the plot bearing Khasra No. 136 by way of its partition by metes and bounds.”

14. Learned counsel for the appellants is unable to controvert or dispute the above said facts and findings.
15. In view of the above noted facts, no ground is made out to interfere in the impugned judgments and decrees of the learned District Courts below. The present Regular Second Appeal is hereby **dismissed**.
16. Pending applications, if any, stand disposed of.

28.04.2026

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No