



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
229

RSA-4331-2015(O&M)
Date of decision: 06.04.2026

Pawan Kumar & Another

...Appellant(s)

Vs.

Ashok Kumar (since deceased) through LRs & Anr

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ramesh Sharma, Advocate
for the appellants.

Mr. Prateek Mahajan, Advocate
Mr. Kunal Soni, Advocate
for the respondent.

NIDHI GUPTA, J.
CM-10433-C-2015

This is an application under Section 151 of CPC for condonation of delay of 1312 days in re-filing the appeal.

The reason mentioned by the applicant-appellant for condonation of such inordinate delay in re-filing the present appeal is that:-

"3... ..The appellant No.1 also suffered with the fever of typhoid and he could not be recovered from the said fever of typhoid and the appellant No.1 used to get medicines from desi hakims, however for ¾ years the appellant No.1 continuously suffered with the typhoid and therefore he could not keep in his mind that he was called by the counsel to get the appeal refilled. Even though



the counsel for the appellants informed regarding refiling of the appeal, however due to the circumstances narrated above, the appellant No.1 could not contact the counsel and therefore appeal could not be refiled within the specified period of refiling.”

The aforesaid reason given by the applicant is neither believable nor medically possible for anyone to suffer from Typhoid for 3-4 years. Furthermore, no medical evidence whatsoever has been brought on record by the applicant to substantiate his said assertion.

Even otherwise, above explanation given by the applicant is cryptic and does not constitute sufficient cause to condone the inordinate delay of 1312 days in re-filing the appeal. Reference is made to judgment of the Hon’ble Supreme Court in **Union of India v. Jahangir Byramji Jeejeebhoy (SC) : Law Finder Doc Id # 2537649**, decided on 03.04.2024, as under:-

“25. It hardly matters whether a litigant is a private party or a State or Union of India when it comes to condoning the gross delay of more than 12 years. If the litigant chooses to approach the court long after the lapse of the time prescribed under the relevant provisions of the law, then he cannot turn around and say that no prejudice would be caused to either side by the delay being condoned. This litigation between the parties started sometime in 1981. We are in 2024. Almost 43 years have elapsed. However, till date the respondent has not been able to reap the fruits of his decree. It would be a mockery of justice if we condone the delay of 12 years and 158 days and once again ask the



respondent to undergo the rigmarole of the legal proceedings.

26. The length of the delay is a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the appellants, it appears that they want to fix their own period of limitation for instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

27. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. We should not keep the 'Sword of Damocles' hanging over the head of the respondent for indefinite period of time to be determined at the whims and fancies of the appellants



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35. *In a plethora of decisions of this Court, it has been said that delay should not be excused as a matter of generosity. Rendering substantial justice is not to cause prejudice to the opposite party. The appellants have failed to prove that they were reasonably diligent in prosecuting the matter and this vital test for condoning the delay is not satisfied in this case.*

(Emphasis added)

Again, in **Pathapati Subba Reddy (Died) by LRs and others vs. The Special Deputy Collector (LA)**, Law Finder Doc Id # 2542600, the Hon'ble Supreme Court has recently held as under: -

"26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;



(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”

(Emphasis added)

I am in complete agreement with the above view expressed by the Hon’ble Apex Court. In the present case, as already noted above, no cogent or plausible explanation has been given by the applicant for condonation of aforesaid inordinate and un-explained delay in re-filing the present appeal.



In this regard, reliance may also be placed upon recent 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. To condone such an inordinate delay, would be tantamount to declaring the Law of Limitation as redundant; and would also be prejudicial to the rights of the opposite party.

Accordingly, the present application stands **dismissed**.

MAIN CASE

The plaintiffs are in second appeal against the concurrent judgments and decrees of the learned District Courts whereby suit filed by the appellants for declaration and consequential relief of permanent injunction, has been dismissed by both the Courts below.

2. It was pleaded in the plaint that the suit property was ancestral Joint Hindu Family Property of the parties. Khushi Ram/father of the plaintiffs had inherited the same from his father Ami Chand. It was pleaded that Ami Chand had died leaving behind his son Khushi Ram. Khushi Ram also died leaving behind his 3 sons Ved Prakash/plaintiff No.3, Ashok Kumar/defendant No.1 and Mitter Prakash (father of plaintiffs No.1 and 2) and his widow Kailashwanti. Khushi Ram was holding the land as Karta. Therefore, he was not entitled to bequeath the same to anyone except to the extent of his share i.e. 1/4th of the land. It was pleaded that despite the above facts, Khushi Ram had executed the impugned Will dated 17.09.1981; thereby bequeathing the entire



land in favour of his three sons and widow. Khushi Ram was only having 1/4th share in the entire land. Thus, Mitter Parkash/father of plaintiffs No.1 and 2, Ved Prakash/plaintiff No.3 and Ashok Kumar had got 1/4th of their own share and 1/6th on the basis of the Will. However, defendant Ashok Kumar had got the Mutation sanctioned in his name in an illegal manner. Further, it was alleged that taking undue advantage of the old age of Kailashwanti, defendant No.1 Ashok Kumar had also got executed two Sale Deeds dated 17.05.1993 in respect of 16 kanal and 14 kanal of land. The said Sale Deeds were without consideration and were got executed without any legal necessity. Moreover, defendant was obstructing plaintiffs from cultivating the land on the ground that he was having Sale Deeds in his favour. Plaintiffs had requested defendant to admit his claim and defendant had refused to do so. Hence, present Suit was filed on 12.05.2004.

3. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, learned Additional Civil Judge (Senior Division), Sultanpur Lodhi had held that suit land was ancestral. However, suit of the plaintiffs was dismissed with costs on ground of limitation, vide judgment and decree dated 09.12.2005.

4. The Civil Appeal filed by the plaintiffs was dismissed by the learned Additional District Judge, Kapurthala vide judgment and decree dated 10.06.2011. Hence, present second appeal by the plaintiffs.



5. It is inter alia submitted by learned counsel for the appellants that the learned District Courts were in error in non-suiting the appellants as they failed to appreciate that the plaintiffs had sought declaration of the suit property being co-parcenary in the ancestral land. It is submitted that therefore, the subsequent events which had taken place are not required to be taken into consideration while deciding the period of limitation in the Civil Suit. It is submitted that since issue in the present Suit is regarding declaration claimed on the basis of inheritance, therefore, as per settled law, limitation would be 12 years from the date of knowledge. Thus, Suit of the plaintiffs was within limitation. However, the learned Courts below have not considered Section 65 of the Limitation Act in the correct perspective and have illegally and wrongly held the Suit to be time barred.

6. It is further submitted that since both the District Courts have held that Khushi Ram was holding the land being Karta of the family and therefore he is not entitled to bequeath the entire land except to the extent of his own share which was to the extent of 1/14th share of the land in suit and therefore the Will dated 7.9.1981 is inoperative and void and subsequently the mutation sanctioned on the basis of said Will are inoperative and void. Therefore the suit filed by the appellants/plaintiffs, dismissed on the basis of limitation by the learned District Courts are not legal and therefore the impugned judgments and decree passed by the learned District Courts are wrong, illegal and hence liable to be set aside by this Hon'ble Court.



7. It is accordingly prayed that the impugned judgments and decrees be set aside.

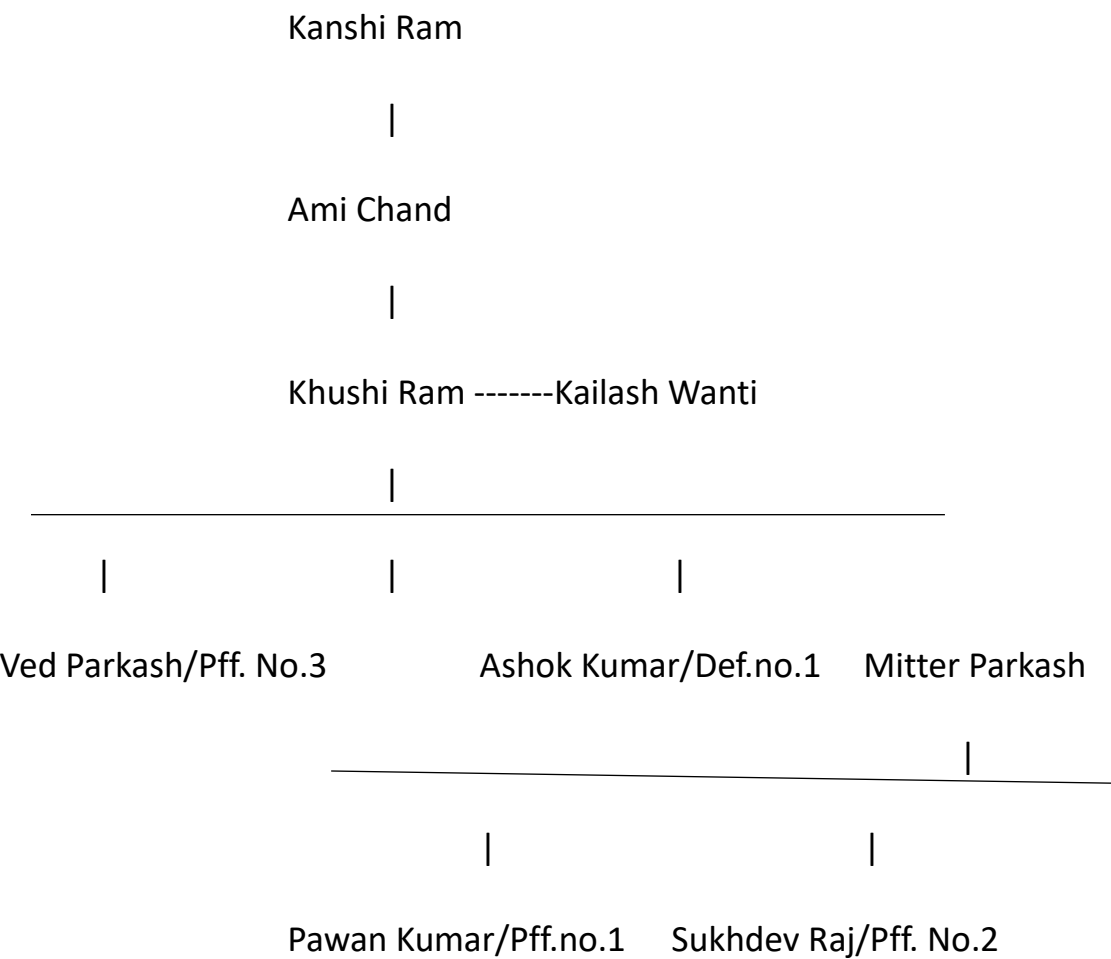
8. Per contra, learned counsel for the respondent/defendant vehemently opposes the submissions of the appellants and submits that Suit of the plaintiffs has been correctly dismissed by both the Courts below. It is submitted that by way of the present Suit filed on 12.05.2004, the plaintiffs have sought to lay challenge to the Will dated 17.09.1981 and Sale Deeds dated 17.05.1993. It is contended that therefore, the learned Courts below have correctly held Suit of the plaintiffs to be time barred. It is submitted that even otherwise, present appeal deserves to be dismissed on grounds of huge delay in re-filing the present appeal. Moreover, there are concurrent findings of fact in favour of the respondent which cannot be interfered in second appeal by this Court. Learned counsel refers to the pedigree table mentioned in Para 8 of the judgment of the learned trial Court dated 09.12.2005, to submit that appellants have been unable to prove three lineal male descendants. Therefore, the finding that the suit land was ancestral in nature, is incorrect. It is accordingly prayed that the present appeal be dismissed.

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

10. It has firstly been contended by the appellants that the suit land was ancestral in nature; and therefore, Khushi Ram was not competent to



dispose of the same by way of the impugned Will dated 17.09.1981 in favour of his widow Kailashwanti, and defendant Ashok Kumar. The admitted pedigree table of the parties is as follows: -



11. From a perusal of the above-said pedigree table, it is clear that suit property in the hands of Khushi Ram was not ancestral property. Thus, he was very much competent to dispose of the same by way of the impugned Will dated 17.09.1981. Findings of the Courts below to the effect that suit land was ancestral in nature, is contrary to the established tenets of law on the subject. It would therefore follow that the Will dated 17.09.1981 and the subsequent Sale Deeds are legal and valid.



12. The appellants/plaintiffs have been non-suited by the learned Courts below only on the ground of limitation. It is my view that the suit of the plaintiffs has been correctly nonsuited on ground of limitation. Vide the present suit filed on 12.05.2004, the plaintiffs have challenged the Will dated 17.09.1981 and the Sale Deeds dated 17.05.1993 and 20.01.1998. Thus, the Will of 1981 has been challenged by plaintiffs after lapse of 23 years. Clearly, therefore, suit is barred by limitation.

13. Moreover, plaintiff No.1/PW7 has admitted that defendant is in possession of the suit property; whereas plaintiffs never came in possession of the suit property. However, suit has been filed for declaration without seeking relief of possession. As such, suit of the plaintiffs without seeking relief of possession is not maintainable.

14. Learned counsel for the appellants is unable to dispute or controvert the aforesaid facts and findings.

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

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

06.04.2026
Sunena

(Nidhi Gupta)
Judge

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