

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****118****RSA-2234-2022(O&M)  
Date of decision: 06.05.2025****Tika Ram @ Teeka Ram & Others****...Appellant(s)****Vs.****Subrati & Others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Mr. Navmohit Singh, Advocate  
for the appellants.****\*\*\*****NIDHI GUPTA, J.  
CM-7711-C-2022**

This is an application under Section 151 CPC for condonation of delay of 26 days in re-filing the appeal.

After going through the contents of the application, which is supported by affidavit of learned counsel for the applicant, the same is allowed subject to all just exceptions and delay of 26 days in re-filing the present appeal is condoned.

**MAIN CASE**

The defendants no.1 to 4 are in second appeal against the concurrent judgments and decrees of the learned Courts below whereby the suit filed by the plaintiffs/respondents No.1 and 2 herein, for declaration and permanent injunction has been decreed by both the Courts below.



2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellants as the “defendants No.1 to 4”; and respondents No.1 and 2 as the “plaintiffs”.

3. Brief facts of the case are that the plaintiffs had filed a suit seeking declaration to the effect that the impugned entries in the copy of Jamabandi for the year 1977-78 and 2007-08 showing the name of the Daya Kishan in column No.5 as alleged Gair Maurusi qua the suit land as described in the plaint as alleged Narmot, and in the Jamabandi for the year 2007-08 are wrong and illegal. The plaintiffs also sought relief of permanent injunction to restrain the defendants from raising any construction or fencing wire over the suit property; as also relief of mandatory injunction to direct the defendants No.5 and 6 to correct the entries in the revenue record.

4. It is submitted by learned counsel for the appellants/defendants that the suit land was auctioned on 21.12.1976 in favour of Daya Kishan against the highest bid of Rs.5,100/-. The auction purchaser paid Rs.1,275/- as earnest money on 21.12.1976 itself and further deposited Rs.225/- on 25.01.1983 and Rs.500/- on 26.06.1984. However, auction was not accepted, and re-auction order was passed by Settlement Officer on 25.08.1977; whereupon land was again put to auction on 25.01.1983; and Daya Kishan offered Rs.6,000/- and he had deposited the difference of earnest money i.e. Rs.275/-. However, this auction was



also set aside by the competent authority vide order dated 17.02.1984. Thereafter, land was auctioned again and previous auction purchaser now offered sum of Rs.8,000/-. Subsequently, the suit land was put to auction on 09.11.1976. The Settlement Officer ordered re-auction of this land on 22.12.1976, which was appealed against by the auction purchaser before the Deputy Secretary-cum-Settlement Commissioner, Haryana. The appeal was dismissed in default on 25.03.1977. Thereafter, the land was auctioned on 17.08.1984 for a sum of Rs.2,000/- in favour of Shiv Charan. However, the same was not approved by Additional Settlement Officer (Sales) vide his order dated 21.09.1984 and the earnest money of Rs.500/- stood refunded to auction purchaser. It is submitted that from the above facts, it is clear that the suit land was purchased by predecessor-in-interest/father of the appellants namely Daya Kishan s/o Shiv Charan. It is for this reason only that the revenue authorities had entered the name of Daya Kishan in the revenue record.

5. It is submitted that therefore, as per the entry in revenue record the land is of abadi deh. The land was allotted to the father of the appellant in the year 1976 but the auction proceedings were not accepted though his father deposited 25% of the amount. Then another auction proceeding was again held in 1982, and again the appellants' father was highest bidder for Rs. 5000. Thus, appellants were in possession of the suit property from 1976 onwards. The father of the appellant had paid the



entire amount though conveyance deed was not executed but the status of appellants as mourusi was admitted.

6. It is further submitted that the trial court failed to appreciate that to protect their possession and ownership right appellants filed a suit against respondents no 3 and 4. The said suit was dismissed on 06.07.2015 by the court of Civil Judge Faridabad. Thereafter the appeal was preferred which was partly allowed and the possession of appellant was protected. Thus, the appellants being in possession cannot be restrained from using property as owner as they are in continuous possession from the year 1976 onwards. It is accordingly prayed that the present appeal be allowed and the impugned judgments and decrees passed by learned Courts below be set aside.

7. No other argument is made on behalf of the appellants.

8. I have heard counsel for the appellants and perused the case file in great detail. I find no merit whatsoever in the arguments raised on behalf of the appellants.

9. It is the case of the appellants that the land was allotted to the father of the appellants in auction. However, it is admitted fact and finding on record that the said auction stood cancelled. Admittedly, no Sale Deed was ever executed in favour of the appellants. Even earnest money was not completely paid by Daya Kishan/father of the appellants. The appellants are laying claim to the suit land only on the basis of auction



notice without any allotment letter or Sale Deed or any other instrument to this effect being in their favour or in favour of their predecessors-in-interest. There is a clear, categoric and cogent evidence on record that the entry in the name of Daya Kishan in the Jamabandi for the year 1977-78 is a stray entry and is not supported by any document. The defendants have failed to establish their ownership rights over the suit property. The auction of the land of which the defendants claim themselves to be owners of, was never accepted by the competent authority. Even possession of the defendants over the suit land was not proved. The receipts placed on record by DW2 does not show the possession of the defendants No.1 to 4 over the suit property as allottees. Those receipts are regarding the auction price only. No sale was ever confirmed by any competent authority neither in favour of Daya Kishan nor in favour of the appellants. No allotment letter was issued in their favour. The land is owned by Rehabilitation Department i.e. defendants No.5 and 6. The trial Court and Appellate Court have held that since the sale was never confirmed by the competent authority at any point of time nor the father of the defendants No.1 to 4 had deposited the entire sale consideration amount then the defendants No.1 to 4 have got no right, title and interest over the suit property. Moreover, merely because father of defendants No.1 to 4 may have deposited some earnest money in all three auctions, would not entitle them to be declared as owners/allottees of the suit property unless and until the auction is



approved by competent authority. Both the Courts below have given the finding that the wrong entries have been made in favour of appellants which are required to be corrected. The appellants are not owners of the suit land therefore they have no right to raise any construction or fencing wire over vacant portion of land bearing khasra No.31. Nature of land is that of evacuee property i.e. public land which has been wrongly encroached upon by the appellants.

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

11. In view of the above, present appeal is **dismissed**.

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

**06.05.2025**

Sunena

**(Nidhi Gupta)**

**Judge**

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No