



**118 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**RSA No.9753 of 2018 (O&M)
Date of Decision : 11.03.2025**

Gurdip SinghAppellant

Versus

Nirmal Singh and othersRespondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Parvez Chugh, Advocate and
Mr. Himanshu Setia, Advocate
for the appellant.

PANKAJ JAIN, J.(Oral)

CM No.18929-C of 2018

This is an application filed under Section 5 of Limitation Act seeking condonation of delay of 52 days in filing the instant appeal.

For the reasons recorded in the application, this Court is satisfied that the applicant/appellant has made out a sufficient cause for condonation of delay.

Consequently, the present application is allowed. The delay of 52 days in filing the instant appeal is hereby condoned.

CM No.18927-C of 2018

This is an application filed under Section 151 CPC seeking condonation of delay of 12 days in re-filing the instant appeal.

For the reasons recorded in the application, this Court is



satisfied that the applicant/appellant has made out a sufficient cause for condonation of delay.

Consequently, the present application is allowed. The delay of 12 days in re-filing the instant appeal is hereby condoned.

RSA No.9753 of 2018 (O&M)

Defendant No.1 is in second appeal.

2. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. appellant as defendant No.1, respondent No.1 as plaintiff, respondent No.2 as defendant No.6, respondents No.3 & 4 as defendants No.2 & 3, respondent No.5 as respondent No.5 and respondent No.6 as respondent No.4.

3. Plaintiff filed suit for possession of immovable property in the shape of a residential house measuring about 6 Marlas as detailed out in the headnote of the plaint. Further relief sought was for permanent injunction restraining defendants No.1 to 5 from changing the nature of the property.

4. As per plaintiff, he along with defendant No.6 is owner of Khasra No.138 as per *Jamabandi* for the year 2009-2010. He is co-sharer to the extent of 5/6. Plaintiff claims to have constructed house over his share of land in Khasra No.138. Mohan Singh father of defendant No.1 along with defendants No.1 to 5 used to reside in the house in question as licensee under the plaintiff. The plaintiff permitted defendants No.1 to 5 and Mohan Singh to reside in the house as they intended to build their own house in the village and were related. Plaintiff claims that despite having made repeated



requests to defendants No.1 to 5 to vacate the house and hand-over the vacant possession, defendants failed to vacate the house. Plaintiff only revoked the licence in September, 2011 and is entitled for possession.

5. Suit was contested by defendants No.1 to 5 denying the claim of the plaintiff. It was claimed that defendants No.1 to 5 and late Mohan Singh, father of defendant No.1, are owners of the suit property. Order of partition, dated 30.01.1989, passed by Revenue Court *re*: Khasra Nos.137, 138, 144, 145, 317, 81, 264 is null and void. Defendants further raised plea of adverse possession. They claimed to be in possession of the suit property since 30.01.1989 and claimed that since then their possession over the suit property has remained uninterrupted, continuous and peaceful, thus they have become owners of the suit property.

6. On the basis of the pleadings, following issues were framed:

- “1. Whether the plaintiff is entitled to relief of possession of suit property as alleged? OPP
2. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for? OPP
3. Whether the suit of the plaintiff is not maintainable? OPD
4. Whether plaintiff has no cause of action to file the present suit? OPD
5. Whether plaintiff has not come to the Court with clean hands and has suppressed and concealed the material facts from the Court? OPD
6. Whether the suit is bad for non-joinder of necessary parties? OPD
7. Whether the suit is not property valued for the purpose of Court fee and jurisdiction? OPD
8. Relief.”



7. In order to prove his case, plaintiff stepped into witness-box as PW1. He placed on record, record of right i.e. *Jamabandi* for the year 2009-10 as Exhibit PA. Certified copies of the sale deeds, Exhibit PB and Exhibit PC. Site plan as Exhibit PD. Copy of the order of partition passed by Tehsildar-cum-Assistant Collector, 1st Grade, Jalandhar as Exhibit PF. In order to prove sale deed No.468 dated 18.08.2003, official witness was examined as PW2. Scribe was examined as PW3. In order to prove the second sale deed, dated 06.07.2009 (Exhibit PC), Deed Writer was examined as PW4. Defendant No.3 appeared as DW1. Copy of the *Jamabandi* for the year 1984-85 was brought on record as Exhibit D2. Copy of *Jamabandi* for the year 1989-90 was brought as Exhibit D3.

8. While deciding issues No.1 and 2, Court of the First instance held that plaintiff Nirmal Singh, in order to prove his ownership over the suit property, brought on record sale deeds Exhibits PB and PC and *Jamabandi* for the year 2009-2010 which show that he became owner to the extent of 5/6th share in Khasra No.138 along with defendant No.6 Gian Singh. Defendants could not produce any document of title to prove their ownership. Rather, defendants pleaded adverse possession. Order of partition passed by AC 1st Grade, Jalandhar, has been brought on record by the plaintiff. Defendants apart from raising plea that the same is void and not binding on their rights, have not been able to prove as to whether the said finding was reversed in the appeal or not. Court of the First Instance thus held that plaintiff is owner in possession of the suit property and



defendants No.1 to 5 are the licensee under him and decreed the suit filed by the plaintiff.

9. Dissatisfied, defendants approached Lower Appellate Court.

9.1. Re-appreciating the findings on record, Lower Appellate Court came to the conclusion that reliance placed by the defendants on Civil Suit No.27/03 dated 27.11.2003 titled as 'Gurdeep Singh vs. Nirmal Singh' decided vide judgment and decree, dated 13.05.2005 does not help the case and cause of defendants. DW3 Manjit Kaur admitted in her cross-examination that she along with her husband Gurdeep Singh filed the said suit against Nirmal Singh and others. The said property is different from the one involved in the present suit. The said suit related to house constructed in the area 12.1/2 Marlas. The suit bearing No.27/03 was instituted w.r.t. house comprised in land bearing Khasra No.47 whereas the house involved in the present suit, relates to house constructed over the land comprised of Khasra No.138. Boundaries of the house in question are different from the boundaries as mentioned in plaint Exhibit DX/2. Appellate Court further found that even though DW1, Avtar Singh, in his cross-examination, claimed that he can produce the title document regarding suit property in his father's name. The matter was adjourned for production of the documents. On the adjourned date, DW1 Avtar Singh could not produce any document. *Qua* the plea of adverse possession raised by the defendants, Lower Appellate Court came to the conclusion that even though the defendants have raised the plea of adverse possession, but they could not prove the date on which



their possession became hostile. Rather, on merits they raised plea of ownership by way of inheritance. They having claimed permissive possession, are precluded from raising plea of adverse possession. Hence, Lower Appellate Court dismissed the appeal filed by the defendants.

10. Counsel for the appellant has assailed the findings recorded by the Courts below pleading that there is no evidence w.r.t. the appellants being licensee over the suit property. No evidence has been brought on record as to how Courts held the appellants to be licensee. The property, in question, was constructed by Lal Singh father of Mohan Singh prior to partition. In the year 1997, the house was reconstructed by the appellants and proforma respondent No.3 to 6. The said fact was not denied in the replication. There is a long history of enmity between the plaintiff No.1 and late Mohan Singh father of the appellant/defendant No.1. The defendants/appellants proved on record written complaint made against Bhag Singh father of the plaintiff, as Exhibit D5 and complaint against plaintiff as Exhibit D6. Conviction of Bhag Singh, father of Nirmal Singh plaintiff on the complaint made by Mohan Singh father of appellant/defendant No.1, has been proved. In view of this evidence, finding recorded by the Courts below to the effect that the plaintiff is licensee, is without any basis. He further submits that defendants raised plea of adverse possession which was not adjudicated by the Court of the First Instance. Thus, the judgment and decree passed by the Courts below need to be reversed being unsustainable.



11. I have heard counsel for the appellant and have carefully gone through records of the case.

12. Counsel for the appellant does not dispute that the instant suit relates to house constructed over land bearing Khasra No.138 (0-13). The earlier *lis* between the parties was *qua* the property constructed over land bearing Khasra No.47. Thus, the earlier *lis* i.e. Civil Suit No.27/03 dated 27.11.2003 titled as 'Gurdeep Singh vs. Nirmal Singh' is *qua* the property other than the one involved in the present suit.

13. Counsel does not dispute that as per order of partition passed by AC 1st Grade, Jalandhar (Exhibit PF), Khasra No.138 came to the share of the plaintiff.

14. In view of above, this Court has no hesitation in holding that the plaintiff proved his ownership over the suit property. More so, when DW1 Avtar Singh though sought time to produce the title documents but failed to, during evidence.

15. Coming on to the plea of adverse possession, trite it is that long and continuous possession itself, cannot be termed as 'adverse' until and unless the person raising plea, is able to plead and prove the date on which his possession became hostile.

16. In the present case, defendants have not been able to prove as to how and when their possession became hostile to the knowledge of the owner(s). Rather the appellants/defendants have raised the plea of adverse possession half-heartedly. They are in two minds. They have not been able



to decide as to whether they want to admit the plaintiffs as owners of the property or want to assert their title over the suit property. In their pursuit to claim ownership over the suit property, they have failed. Hostility of the possession, they could not prove.

17. In view of above, this Court does not find any reason to interfere in the well reasoned findings recorded by the Courts below. Resultantly, the instant second appeal is ordered to be dismissed.

18. Pending application(s), if any, shall also stand disposed off.

March 11, 2025

(Pankaj Jain)

Dpr

Judge

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No