

**137 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA-1398-2025 (O&M)****Date of Decision: April 30, 2025****Simarjit Kaur (Deceased) through LRs and another Appellants**

Vs.

Gurdev Singh and others .. . RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**Present:-** Mr. Joginder Pal Devgan, Advocate for the appellant.**DEEPAK GUPTA, J.****CM-4854-C-2025**

This is an application under Section 5 of the Limitation Act read with Section 151 CPC to condone the delay of 66 days in re-filing the appeal.

Heard.

For the reasons as mentioned in the application, the delay of 66 days in re-filing the appeal is hereby condoned.

The application stands disposed of.

RSA-1398-2025 (O&M)

Suit for declaration and consequential relief of permanent injunction regarding property in dispute filed by plaintiff – Simarjit Kaur and another was dismissed by the trial Court on 01.10.2019 and the appeal filed by the said plaintiffs was dismissed by the First Appellate Court on 14.11.2024. Assailing these concurrent findings, plaintiffs have approached this Court by way of present regular second appeal.

2. It was claimed that plaintiffs and respondent No.16 were owner in possession of the suit property to the extent of ½ share. They assailed the judgment and decree dated 01.10.1990 passed in the previous litigation on

the ground that it was obtained by the defendants fraudulently because the shares of the predecessor of the plaintiffs were not correctly reflected therein.

3. Both the Courts below did not find merit in the contention and so, dismissed the suit.

4. Learned counsel for the appellants contends that the Courts below have failed to appreciate the evidence in right perspective.

5. It will be relevant to reproduce the relevant observations made by the First Appellate Court, which are as under:-

“10 From the arguments put forth the following point of determination arises in the instant case.

"Whether there are sufficient grounds to set aside the Judgment and Decree dated 01.10.2019 passed by the Court of Sh. Gurinderpal Singh, PCS, Civil Judge (Jr. Division). Patti, Distt. Tarn Taran?"

11 The Lower Court record was perused. Perusal of the same transpires that the appellant/plaintiff was given sufficient opportunities to lead the evidence but on failure of the plaintiff/appellant to examine any witness in support of her contentions, the evidence was closed by order on 18.09.2019 and thereafter, the suit was dismissed on 01.10.2019. It is pertinent to mention here that the plaintiff Simarjit Kaur stepped into the witness box as PW1 on 10.09.2019 and her cross examination was deferred and thereafter, even she failed to appear before the Court to subject herself in the cross examination. No effort whatsoever, was made by the plaintiff/appellant to set aside the order dated 18.9.2019. Thus virtually, it is a case of no evidence. It is worthwhile to mention here that the civil appeal was filed by the appellants which was dismissed in default on 17.09.2021 which was restored vide order dated 03.05.2024. Thereafter, an application for leading secondary evidence was moved by the appellant under Order 41 Rule 27 r/w section 151 of CPC which was dismissed vide order dated 23.10.2024. Thus, despite availing sufficient opportunities, the appellant failed to lead any evidence to prove the issues. No reason has been assigned

by the plaintiffs/appellants as to why the evidence was not lead by them before the trial Court. The plaintiff appellant by way of the present appeal has challenged the Judgment and Decree dated 01.10.1990 passed by the Court of Sh. Birinder Singh, PCS, the then Sub Judge, Patti by claiming it to be illegal null and void and the result of fraud and mis-representation. However, there is no iota of evidence to even remotely suggest that a fraud was played upon the Court at the time of passing of the said Judgment and Decree in question. Rather perusal of the said Judgment and Decree dated 01.10.1990 which is mark-B transpires that the same was passed on the basis of the compromise effected between Balbir Singh, Darshan Singh and Gopal Singh. None of the above referred persons had ever challenged the said Judgment and Decree dated 01.10.1990 during their life time and same attained finality. The appellants Simarjit Kaur (since deceased), Tejbir Singh and Jodhbir Singh are claiming their rights through Darshan Singh, who was one of the parties to the said Judgment and Decree dated 01.10.1990. He had admitted to the compromise that was arrived at between the parties and had never challenged it during his life time and hence, the dispute cannot be reopened by the legal representatives of Darshan Singh later-on by claiming that the said Judgment and Decree was a result of fraud and mis-representation.”

6. It is evident from the above-said observations, which are based upon record that plaintiff – Simarjit Kaur had appeared in the witness box on 10.09.2019 for examination in chief, but after cross-examination was deferred, she did not enter the witness box. The Court found that it was a case of no evidence. After dismissal of the suit, the appeal was filed, which was dismissed in default on 17.09.2021 and after restoration on 03.05.2024, application for secondary evidence was moved, which too was dismissed. It was thus, observed by the Courts below that despite availing adequate opportunities, plaintiffs failed to adduce any evidence to support the case that impugned judgment and decree dated 01.10.1990 was illegal, null and void or the result of fraud and misrepresentation.

7. In view of above findings based on record, which could not be controverted by Ld. Counsel for the appellants, this Court does not find any

illegality or perversity in the concurrent findings returned by the Courts below, which are based upon proper appreciation of the record.

8. As such, finding the present appeal to be devoid of any merit, the same is hereby dismissed.

April 30, 2025

Sarita

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No