

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****128****RSA-1048-2023 (O&M)****Date of decision: 05.02.2025****Hansraj Batra****...Appellant(s)****Vs.****Ashwani Batra & Another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Proxy counsel for Ms.Ramandeep Kaur,  
Advocate for the appellant.

**\*\*\*****NIDHI GUPTA, J.****CM-4024-C-2023**

This is an application under Section 151 CPC for condonation of delay of 104 days in re-filing the appeal.

After going through the contents of the application, which is supported by affidavit, the same is allowed subject to all just exceptions and delay of 104 days in re-filing the present appeal is condoned.

**MAIN CASE**

The appellant/plaintiff has challenged the concurrent judgments and decrees of the Courts below whereby the suit filed by the appellant for declaration that he is owner in possession of the suit property as detailed in the plaint, along with relief of permanent injunction restraining the defendants from alienating or creating any change over the suit property, has been dismissed by both the Courts below.



2. Brief facts of the case are that the plaintiff filed a suit for declaration to the effect that he is owner in possession of SCO No.97 situated at shopping Complex, Panipat and shop No.1126-1127 situated at Ward No.7, Railway Road Panipat (suit property) on basis of agreement-cum-writing dated 03.11.2012; and is entitled to recover payment of Rs.2,51,000/- along with interest from defendant; and to the declaration that sale deeds No.703&704 dated 26.04.1999 are illegal; along with consequential relief of permanent injunction restraining the respondents from alienating suit property.

3. The case as set out by the plaintiff in the plaint is that the plaintiff started business of furniture in the year 1962 and he was sole proprietor of the firm. Then he joined defendant No.1 and defendant No.2 as partners in the firm without any investment by the said defendants and the entire investment in the partnership business was made by the plaintiff. The plaintiff was partner in the firm to the extent of 40% share and defendants No.1 and defendant No.2 to extent of 30% each. In the year 2002 the firm purchased SCO-97 by taking loan of Rs.5 lakh. The entire loan was discharged by the plaintiff. However, the defendant No.1 got the said shop purchased in his own name and told the plaintiff that the said shop no. 97 had been purchased in the name of the plaintiff. The suit property is constituted of SCO-97 which have been purchased from income of plaintiff whereas sale deed have been got executed in favour of defendant No.1 fraudulently. It is pleaded that ultimately to resolve the



family dispute, a family settlement-cum-agreement took place between parties on 03.11.2012 vide which defendants No.1 and 2 agreed to give SCO No.97 and a sum of Rs.2,51,000/- to the plaintiff. However, the defendants failed to comply with the terms and conditions of the said Family Settlement which was duly signed by them, and in fact, wanted to alienate suit property. Hence, present suit.

4. Upon notice, written statement was filed by defendant no.2 who resisted the suit on several grounds.

5. On the basis of pleadings of the parties, following issues were framed vide order dated 29.05.2015:-

- “1. Whether the plaintiff is entitled to decree for declaration as prayed?OPP*
- 2. Whether plaintiff is entitled to relief of permanent injunction as prayed? OPP*
- 3. Whether the suit of plaintiff is not maintainable in present form?OPD*
- 4. Whether the plaintiff has no locus standi to file the present suit? OPD*
- 5. Whether the suit of plaintiff is bad for mis-joinder and non-joinder of necessary parties? OPD*
- 6. Relief.”*

6. Upon considering the pleadings, and the evidence adduced by the parties, the suit of the plaintiff was dismissed by the Id. trial Court vide judgment and decree dated 20.12.2017. The plaintiff's appeal against the said judgment and decree dated 20.12.2017 was also dismissed by the Id. Additional District Judge, Panipat vide judgment and decree dated 29.10.2022. Hence, present second appeal.



7. Learned counsel for the appellant/plaintiff submits that the plaintiff is owner in possession of the suit properties on basis of family settlement-cum-writing dated 03.11.2012 as per which the defendants had agreed to execute and register the Sale Deed; and to pay Rs.2,51,000/- in lieu of the claim left by the plaintiff in the partnership firm of the plaintiff and the defendants. Learned counsel submits that however, the defendants have failed to honour the said family settlement dated 03.11.2012; and the defendant No.1 has failed to execute the Sale Deed. It is submitted that the plaintiff had led voluminous evidence to prove the Family Settlement before the Courts below. In fact the learned lower Appellate Court has accepted that the writing dated 03.11.2012 is a Family Settlement. Thus, though the Plaintiff has proved the Family Settlement yet the suit of the plaintiff has been dismissed. It is accordingly prayed that the judgments passed by the Courts below be set aside and the suit filed by the appellant be decreed with costs.

8. No other argument is made on behalf of the appellant.

9. I have heard learned counsel for the appellant and perused the case file in great detail.

10. Learned counsel for the plaintiff has been at great pains to impress upon this Court that the writing dated 03.11.2012 was a 'Family Settlement' entered into between the parties. However, the writing dated 3.11.2012 (Ex.PW2/A) was found to be an 'Agreement' between the parties and not a 'Family Settlement'. Thus, the remedy



available with the plaintiff was to file a suit for specific performance and not a suit for declaration. Further, even if the document is considered to be a Family Settlement then also it is compulsorily required to be registered because it contains recitation of family settlement. Thus, in either situation, the said document dated 3.11.2012, was required to be registered under Section 17 of the Registration Act for it to be given effect to.

11. It is the grievance of the plaintiff that the defendants have failed to honour and/or perform their part of the Family Settlement dated 03.11.2012. To the contrary, though the defendants have not specifically denied the execution of alleged writing/agreement yet, they have stated in their cross-examination that it was the plaintiff who has not performed his part of said agreement. On evidence it was found by the Courts below that both parties had failed to honour the terms and conditions of the said Agreement, reducing it to a mere piece of paper. The family settlement/agreement (Ex.PW2/A) reveals that all the terms and conditions were to be complied with by parties up to 05.12.2012 but parties did not act upon the settlement ever. It remained a piece of writing and was never complied with. In fact, it was found that as many as three settlements had been entered into between the parties. As such, the plaintiff cannot be declared as owner of SCO-97 on basis of this agreement nor he is entitled to recover any amount as agreed.



12. Further contention of the plaintiff is that he is owner of SCO-97 and shop No.1126-1127 on the ground that he paid sale consideration of said property and registered sale deeds were wrongly executed in favour of defendant No.1. However, the said contention of the plaintiff is liable to be rejected as: a) there is no evidence to prove that sale consideration of suit property at time of purchase was paid for by plaintiff; b) Section 4 of Prohibition of Benami Property Transaction Act, 1988 prohibits the plaintiff from claiming title over suit property on the ground that he is the real owner because he paid price of the same; c) Even if it is presumed that sale consideration of suit property was paid by plaintiff still he cannot claim title over suit property because suit property had been purchased in name of defendant No.1 by way of registered sale deed.

13. Ld. Counsel for the appellant-plaintiff is unable to deny or controvert the above said facts and findings.

14. As such, I find no ground is made out to interfere in the well-reasoned judgments of the Id. Courts below. The present appeal accordingly, stands **dismissed**.

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

**05.02.2025**  
Sunena

**(Nidhi Gupta)**  
Judge

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