



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

109

RSA-5396-2019 (O&M)  
Date of Decision: 19.03.2025

Iqbal Singh

...Appellant

V/s

Ranjit Singh and others

...Respondents

**CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present: Mr. S.P.S. Aulakh, Advocate, for the appellant.

\*\*\*

**VIKRAM AGGARWAL, J (ORAL)**

CM-15342-C-2019

Prayer in the present application preferred under Section 151 CPC is for condonation of delay of 38 days in re-filing the appeal.

Heard.

For the reasons mentioned in the application, which is duly supported by an affidavit, the same is allowed. The delay of 38 days in re-filing the appeal is condoned.

CM-15343-C-2019

Prayer in the present application preferred under Section 5 of the Limitation Act, 1963 is for condonation of delay of 142 days in filing the appeal.

Heard.

For the reasons mentioned in the application, which is duly supported by an affidavit, the same is allowed. The delay of 142 days in filing the appeal is condoned.

RSA-5396-2019

This is plaintiff's appeal against the judgment and decree dated 23.08.2018 passed by the Court of learned Addl. District Judge, Jalandhar, dismissing the appeal preferred against the judgment and decree dated 20.05.2015 passed by the Court of learned Civil Judge (Sr. Divn.), NRI Cases, Jalandhar, vide which the suit for declaration and permanent injunction filed by him was dismissed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. Plaintiff (Iqbal Singh) is the son of defendant No.1 (Ranjit Singh). Defendant No.2 (Tejinder Singh) is his brother. Defendant No.3 (Jasbir Kaur) is his sister. Defendants No.4 to 9 are subsequent purchasers of the suit land.

4. The plaintiff filed a suit for declaration to the effect that he and the defendants were joint owners in possession of land measuring 20 kanals 5 ½ marlas of land (fully described in the plaint) situated in Village Sagan, Tehsil and District Jalandhar (hereinafter referred to as the "suit land"), the same being joint Hindu Family co-parcenary property. In the alternative a decree for joint possession or possession was also sought. Further, declaration was also sought that the sale deed/transfer deed dated 26.05.2003 with respect to land measuring 7 kanals 18 marlas out of the suit land and gift deed dated 26.05.2003 with respect to land measuring 12 kanals 7½ marlas out of the suit land, executed by defendant No.1 in favour of defendant No.2 was illegal, null and void and not binding upon the rights of the plaintiff, the suit land being Joint Hindu Family co-parcenary property. Mutation Nos.1184 and 1194 sanctioned on the basis of the said sale deed/transfer deed were also challenged. Cancellation of the said deeds was also sought.



5. The basic case set up was that since the property was joint Hindu Family co-parcenary property, defendant No.1 being a Karta, could not have alienated the suit land without any legal necessity. It was the basic case of the plaintiff that since he lives in Italy, defendant No.1 had executed a sale agreement with the plaintiff and 18 *kanals* of land was sold to him vide registered sale deed dated 12.09.2001. It was, therefore, averred that as regards the remaining land i.e. the suit land, defendant No.1 had no right to alienate the same.

6. The suit was opposed by way of written statements. Defendants No.1 and 2 raised certain preliminary objections with regard to maintainability of the suit, the plaintiff not having approached the Court with clean hands etc. On merits, it was averred that Chanchal Singh had expired in 1957 and till that time, the plaintiff was not born. The sale deed dated 12.09.2001 had been executed as the plaintiff wanted to take his share out of the joint property and the sale deed, therefore was a *sham* transaction. In fact, the sale deed was executed so that no dispute would arise at a later stage and no consideration was passed at the time of execution of the sale deed. It was averred that in view of the same, defendant No.2 was entitled to the remaining share, which was conferred upon him by way of the sale deed and gift deed. It was also averred that the plaintiff was in the possession of his specific share since 2001.

7. The other defendants also filed written statement raising the plea that they were bona fide purchasers of the land for consideration.

8. Replication was filed, in which the contents of the written statements were denied and those made in the plaint were reiterated.

9. From the pleadings of the parties, following issues were framed by the trial Court:-



- “1. Whether the plaintiff is entitled to declaration as prayed for?OPP***
- 2. Whether the plaintiff is entitled for permanent injunction as prayed for?OPP***
- 3. Whether the suit is not maintainable in the present form?OPD***
- 4. Whether the plaintiff has not come to the Court with clean hands and has suppressed material facts from the Court?OPD***
- 5. Whether the plaintiff is stopped by his own acts and conducts from filing the present suit?OPD***
- 6. Relief.”***

10. Parties led their respective evidence. The trial Court dismissed the suit filed by the plaintiff and the appeal preferred against the said judgment and decree was also dismissed by the first appellate Court leading to the filing of the present second appeal.

11. I have heard learned counsel for the appellant.

12. The sole argument raised by learned counsel for the appellant is that since the suit land was ancestral property, the same could not have been alienated by defendant No.1 to defendant No.2. Learned counsel has referred to documents produced by the plaintiff to prove his case that the land was ancestral property. Learned counsel has also referred to the judgments passed by both the Courts and has submitted that the said judgments are not sustainable.

13. I have considered the submissions made by learned counsel for the appellant and have perused the record.

14. As regards the nature of the property, it was proved on record that the original excerpt etc. was not produced. PW2 (Vijay Kumar), who appeared with the said document, admitted in his cross-examination that the



originals had not been produced. Under the circumstances, it was not proved that the suit land was ancestral property. Be that as it may, it is an admitted fact that land measuring 18 *kanals* was alienated by defendant No.1 in favour of the plaintiff by way of a registered sale deed dated 12.09.2001. It was, therefore, rightly observed by the trial Court that it appears that some family arrangement had taken place as a result of which almost half of the suit land owned by defendant No.1 was alienated in favour of the plaintiff and the remaining was alienated in favour of defendant No.2. The plaintiff cannot be permitted to blow hot and cold in the same breath. Once the sale deed had been executed in his favour, it would not be open for him to contend that there was no legal necessity with defendant No.1 to alienate the remaining property in favour of defendant No.2. There was no evidence on record to show that the sale deed was executed on account of legal necessity. Still further, there was no evidence to show that some consideration had passed when the said sale deed was executed. Under the circumstances, both the Courts found that the two documents i.e. sale deed dated 26.05.2003 and gift deed dated 11.09.2003 executed by defendant No.1 in favour of defendant No.2 could not be set aside.

15. As regards the previous case filed by the plaintiff, it was withdrawn (Ex.DX). No doubt, the same was not disclosed by him in the plaint. Though, it amounts to not approaching the Court with clean hands, however, on this ground alone the plaintiff should not be non-suited especially keeping in view the fact that the said case had not been decided on merits and the same had only been withdrawn.

16. From the aforesaid discussion, it emerges that there is no illegality in the findings under challenge warranting interference.

17. In view of the above, I do not find any merit in the instant regular



second appeal and the same is accordingly dismissed.

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

**(VIKRAM AGGARWAL)**  
**JUDGE**

**March 19, 2025**

vcgarg

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No