

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

CM-10718-C-2019; &
CM-10719-C-2019 in and
RA-RS-106-2019 in
RSA-2280-1990

Mohinder Pal Gugnani**...Appellant**

Versus

Bhagat Singh Malik

...Respondents

Reserved on: 08.04.2026**Pronounced on: 20.04.2026****Pronounced fully/operative part: Fully****CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

Argued by: Mr. Dinesh Arora, Advocate and
Mr. Jatin Sehra, Advocate
for the applicant-appellant.

Mr. N.C. Kinra, Advocate and
Ms. Apoorva Kinra, Advocate
for the respondent.

DEEPAK GUPTA, J.

The present order disposes of a review application [RA-RS-106-2019] filed under Order XLVII Rules 1 and 2 read with Section 151 CPC, seeking recall of the judgment dated 13.07.2018, whereby RSA No. 2280 of 1990 was dismissed. The application is accompanied by an application [CM-10718-C-2019] under Section 5 of the Limitation Act for condonation of delay of 346 days, as well as an application [CM-10719-C-2019] under Order XLI Rule 27 read with Section 151 CPC for permission to place on record additional evidence.

2. **CM No. CM-10718-C-2019** : At the outset, this Court proceeds to consider the application for condonation of delay. Though the respondent has contested the period of delay to be 171 days only, the question is whether sufficient cause has been shown.



3. As per applicant – appellant, the earlier counsel Shri S.C. Kapoor, representing him had expired and that time was consumed in retrieving the record and engaging new counsel.

4. In matters where substantial rights are involved, a liberal approach is required while construing “sufficient cause” so as to advance justice. The litigation in question has been pending since the year 1984, and refusal to condone delay would result in foreclosure of adjudication on merits. In these circumstances, the explanation furnished cannot be said to be lacking any bona fides. Accordingly, the delay in filing the review application is condoned.

5. **CM No. CM-10719-C-2019** : Taking up the the application under Order XLI Rule 27 CPC, applicant - appellant seeks to place on record the order dated 26.04.1994 (*Annexure A-3*) passed by the Financial Commissioner.

6. It is trite that additional evidence at the appellate stage is not to be permitted as a matter of course. However, the Order XLI Rule 27 CPC itself carves out exceptions, where the document is necessary for enabling the Court to pronounce judgment, or for any other substantial cause.

7. In the present case, the entire defence of the respondent rested upon the alleged cancellation of allotment in favour of the original allottee Sardari Lal. The order dated 26.04.1994, which sets aside such cancellation, directly impacts the very foundation of the dispute. Non-consideration of such a material document would lead to an incomplete and potentially erroneous adjudication. Therefore, notwithstanding the question of due diligence, this Court finds it appropriate to exercise its discretion and permit the document to be taken on record. Application is allowed accordingly.

8. **RA-RS-106-2019 in RSA No. 2280 of 1990** : Having allowed the above said applications, the Court proceeds to examine the review petition



on merits.

9. The scope of review is indeed limited. However, where a material piece of evidence, having a direct bearing on the rights of the parties, was not brought to the notice of the Court, resulting in an error apparent on the face of record, the Court would be justified in exercising its review jurisdiction.

10. In the present case, the order dated 26.04.1994 passed by the Financial Commissioner, which came into existence during pendency of the appeal and which restored the allotment in favour of Sardari Lal, was not considered at the time of dismissal of the appeal on 13.07.2018. The omission has materially affected the adjudication, thereby constituting a valid ground for review.

11. ***On merits***, it emerges from the record that the allotment of the suit land in favour of Sardari Lal in 1958 and conferment of proprietary rights upon him in 1959 are not in dispute. It is equally undisputed that upon his death, the property devolved upon his widow Shiva Wanti, and that the plaintiff purchased the same through a duly registered sale deed dated 21.12.1979. The validity of this sale deed has been concurrently upheld.

12. The only challenge raised by the defendant was premised upon the alleged cancellation of allotment. However, in view of the order dated 26.04.1994 passed by the Financial Commissioner, setting aside such cancellation, the very basis of the defendant's plea stands demolished. Consequently, the chain of title in favour of the plaintiff stands duly established in law.

13. On the other hand, the defendant has failed to substantiate his own title. No documentary evidence has been produced to establish allotment in favour of his predecessor, or the title of his vendor Smt. Bimla Kataria. Even the sale deed in his favour has not been proved on record. In



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such circumstances, the defendant cannot claim to be a bona fide purchaser, nor can he assert a better title than that of the plaintiff.

14. The finding recorded by the First Appellate Court with regard to non-identification of the suit property also cannot be sustained. The site plan Ex.P5 proved on record clearly demonstrates that the encroachment made by the defendant falls within the khasra number forming part of the property purchased by the plaintiff. The evidence on record was sufficient to establish the identity of the encroached portion, and the contrary finding recorded by the First Appellate Court is perverse and contrary to the material available on record.

15. At the same time, it cannot be overlooked that the defendant has been in possession of the disputed portion since 1984 and has raised construction thereupon. In connected matters [*RSA-2920-1984 and RSA-2092-1985 decided on 15.11.2013*] involving similarly situated parties, relief has been moulded by granting compensation in lieu of possession, taking recourse to equitable principles embodied in Section 51 of the Transfer of Property Act. Keeping in view the long possession of the defendant and the interest of justice, this Court deems it appropriate to adopt the same course.

16. Accordingly, while holding the plaintiff to be the lawful owner of the suit property, it is directed that the defendant shall be entitled to retain possession of the portion (116 – 1/9 sq. yds) under his occupation subject to payment of the current market value thereof to the plaintiff. The said market value shall be determined by the trial Court within three months from the date of receipt of certified copy of this order. Both the parties will be provided two opportunities each to produce evidence in this regard of short duration. In case, the trial Court is unable to determine the actual market value on the basis of evidence produced by the parties, the trial Court will be at liberty to determine the same on the basis of the collector rate as on today. The defendant shall deposit the determined



amount within a period of three months from the date of such determination. In the event of failure to make payment within the stipulated period, the plaintiff shall be entitled to possession of the suit property, and the defendant shall remove the construction raised thereon, failing which the plaintiff shall be entitled to take possession in accordance with law.

17. The review application is accordingly allowed, the judgment dated 13.07.2018 is recalled, and the matter stands disposed of in the above terms. Any other application, if pending, also stands disposed of.

20.04.2026

Yogesh

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No

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