



RSA-653-2021 (O&M)

-1-

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

-.-

**RSA-653-2021 (O&M)
Date of Decision : 27.10.2025**

Darshan Singh (Since deceased) through LR
and Another

....Appellant

VERSUS

Bhupinder Singh and Others

...Respondents

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. I.S.Brar, Advocate for the appellants.

-.-

MANDEEP PANNU, J.

CM-3483-C-2021

This is an application for condonation of delay of 1291 days in re-filing the present appeal.

For the reasons stated in the application, delay of 1291 days in re-filing the present appeal is condoned.

Application stands disposed of.

CM-3484-C-2021

This is an application for condonation of delay of 159 days in filing the present appeal.

For the reasons stated in the application, delay of 159 days in filing the present appeal is condoned.

Application stands disposed of.

**RSA-653-2021 (O&M)**

-2-

RSA-653-2021 (O&M)

1. The present Regular Second Appeal has been filed by the appellants—plaintiffs assailing the concurrent findings of the Courts below, whereby the learned Civil Judge (Junior Division), Bathinda, vide judgment and decree dated 11.02.2015, dismissed the suit of the plaintiffs, and the learned District Judge, Bathinda, vide judgment and decree dated 05.08.2016, affirmed the said findings and dismissed the appeal.

Brief facts

2. The plaintiffs instituted a suit for declaration to the effect that they are owners in possession of land measuring 5 kanals 14 marlas comprised in Khasra No. 130/1/1 min (5–14), Khata No. 43/106, situated in the revenue estate of village Kal Jharani, District Bathinda, and that the entries in the revenue record showing the defendants as owners are wrong and liable to be corrected. They also sought a decree for permanent injunction restraining the defendants from dispossessing them from the suit land or alienating it in any manner.

3. It was the case of the plaintiffs that they were originally owners of the suit land, which they had sold to the defendants. However, soon thereafter, an exchange agreement was entered into between the parties on 21.04.2003, whereby the plaintiffs allegedly exchanged their land measuring 5 kanals 14 marlas comprised in Khasra No. 105/2/3 min (5–14) with the defendants' land comprised in Khasra No. 130/1/1 min (5–14). The plaintiffs claimed that since the execution of the said agreement of exchange, they had been in possession of the suit land as owners, cultivating it and enjoying its usufructs.

4. The plaintiffs further pleaded that while executing the sale deed on 21.04.2003, a clerical error occurred in the office of the scribe, as Khasra No.

**RSA-653-2021 (O&M)****-3-**

130/1/1 min (5–14) was mistakenly written instead of Khasra No. 105/2/3 min (5–14), which was intended to be sold. Upon realizing the mistake, late Darshan Singh and his brother Harbans Singh (plaintiffs) approached the defendants, who allegedly agreed that instead of executing a new sale deed, both sides would execute an exchange agreement to correct the error and avoid double expenses. Consequently, the exchange agreement was drawn and executed on the same day, i.e., 21.04.2003, at the Tehsil Complex, Bathinda. As per the plaintiffs, both parties signed the document, and attesting witnesses, Chuhar Singh and Gurbachan Singh, residents of village Kal Jharani, also signed and thumb-marked the same. It was contended that possession was mutually exchanged, and since then, the plaintiffs have been in continuous possession of the exchanged land, while the defendants have remained in possession of the other.

5. It was further stated that the defendants, taking undue advantage of the erroneous revenue entries, attempted to forcibly dispossess the plaintiffs from the suit land. The plaintiffs alleged that on 7.06.2010, the defendants tried to take forcible possession but were prevented by the timely intervention of the villagers. They, however, continued to threaten dispossession, compelling the plaintiffs to file the present suit on 8.06.2010.

6. The defendants filed a written statement raising preliminary objections regarding maintainability, limitation, locus standi, estoppel, and concealment of material facts. On merits, the defendants admitted that the plaintiffs had executed a registered sale deed No. 522 dated 21.04.2003 in their favour regarding land measuring 5 kanals 14 marlas comprised in Khasra No. 130/1/1 min (5–14), along with possession. However, they denied the execution of any agreement of exchange, asserting that the alleged document dated 21.04.2003 was

**RSA-653-2021 (O&M)**

-4-

forged and fabricated with an ulterior motive to grab the land sold to them. They further stated that mutation of the sale was duly sanctioned in their favour and reflected in the revenue records, including Jamabandi for 2007–08 and Khasra Girdawari, which recorded them as owners in possession. They denied that any mistake in Khasra number had occurred or that any correction was ever discussed or agreed upon between the parties. The defendants asserted that since 21.04.2003, they have remained in exclusive possession of the land as absolute owners. It was also pleaded that the plaintiffs, despite having full knowledge of the sale and subsequent entries, did not raise any objection for over eight years, and therefore, the suit was hopelessly barred by limitation.

7. Replication was filed by the plaintiffs reiterating their original pleadings and denying the assertions made in the written statement.

8. From the pleadings of the parties, the following issues were framed by the learned trial Court:

1. Whether the plaintiffs are entitled to a declaration as prayed for? OPP
2. Whether the plaintiffs are entitled to a decree for permanent injunction as prayed for? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Relief.

9. In order to prove their case, the plaintiffs examined PW1 Kulwant Singh Brar, Advocate, who identified the signatures and drafting of the agreement of exchange dated 21.04.2003. PW2 Harbans Singh, one of the plaintiffs, deposed in support of the execution and contents of the said agreement, reiterating that the exchange was entered into voluntarily on the same day as the sale deed. PW3



Gurbachan Singh, one of the attesting witnesses, also supported the plaintiffs' version and stated that he was present at the time of execution and that both parties had taken possession of their respective exchanged lands. The plaintiffs also tendered documents marked Ex. P1 to Ex. P5 in support of their claim.

10. On the other hand, the defendants examined DW1 Gurmeet Singh and DW2 Mewa Singh, both of whom denied execution of any agreement of exchange and asserted that possession had been delivered to them under the sale deed dated 21.04.2003. They produced documents Ex. DX1 to Ex. DX5, including the registered sale deed and copies of Jamabandi and Khasra Girdawari, to establish their ownership and possession over the suit land.

11. The learned trial Court, after hearing the arguments advanced by the learned counsel for the parties and upon a thorough appraisal of the pleadings, documentary evidence, and oral testimonies, recorded its findings to the effect that the plaintiffs had failed to establish the existence or validity of the alleged agreement of exchange dated 21.04.2003. The Court observed that although PW1, Kulwant Singh Brar, Advocate, deposed regarding the preparation of the exchange deed and identified his signatures thereon, yet in his cross-examination, he was unable to state when the document was actually presented before him or drafted. He was specifically referred to a portion of the exchange deed, Ex. P1, marked at point 'A', and he admitted that the ink used at that portion differed from the ink used in the rest of the document. This variation in ink, as per the trial Court, raised serious doubts about the authenticity and contemporaneity of the alleged document.

12. Further, PW2, Harbans Singh, one of the plaintiffs, deposed regarding the alleged possession of the land in question pursuant to the exchange; however,

**RSA-653-2021 (O&M)****-6-**

during cross-examination, he candidly admitted the execution of the registered sale deed dated 21.04.2003 (Ex. D1), whereby land measuring 5 kanals 14 marlas stood sold to the defendants. PW3, Gurbachan Singh, who was produced as an attesting witness to the alleged exchange deed, also identified his signatures but admitted in cross-examination that on the same day, i.e., 21.04.2003, the sale deed (Ex. D1) was executed and possession of the suit land was delivered to the defendants under the said sale. He categorically stated that there was no mention of any exchange deed at that time. He further expressed ignorance as to whether any mutation was ever entered on the basis of the alleged exchange writing.

13. On the other hand, DW1, Gurmit Singh, identified the thumb impression of Mewa Singh on the sale deed (Ex.D1) and deposed that no exchange could be validly effected through an unregistered and unstamped writing. He was confronted with a suggestion that the land had been transferred as per an exchange deed, but he denied the same and reiterated that the plaintiffs were never in possession of the suit land. DW2, Mewa Singh, also denied execution of any such writing of exchange and affirmed that the defendants continued in possession of the land in dispute ever since the sale.

14. The learned trial Court, while evaluating the entire evidence, concluded that there was no credible proof of any mistake in the sale deed that necessitated the preparation of a fresh writing of exchange. The Court observed that the portion of the document where the Khasra number was written in the alleged exchange deed appeared in different ink, which the scribe himself had admitted during cross-examination. This, in the opinion of the Court, created a serious suspicion about the genuineness of the document. The Court found that the plaintiffs had failed to discharge the burden of proving that the exchange deed was

**RSA-653-2021 (O&M)****-7-**

validly executed, and accordingly, held that the plaintiffs were not entitled to any declaration or injunction as prayed for. Consequently, the suit was dismissed.

Findings of the lower Appellate Court

15. Feeling aggrieved by the said judgment and decree dated 11.02.2015, the plaintiffs preferred an appeal before the learned Additional District Judge, Bathinda. The learned first appellate Court, after reappraising the evidence and hearing both sides, upheld the findings of the trial Court in a well-reasoned judgment dated 05.08.2016.

16. The learned lower appellate Court observed that it was an admitted position that the defendants had purchased the suit property from the plaintiffs through a registered sale deed dated 21.04.2003 (Ex. D1), and that mutation had been duly sanctioned in their favour. The revenue record, including Jamabandi and Khasra Girdawari, also reflected the defendants as owners in possession of the suit property on the basis of the said sale. The appellate Court held that there was sufficient evidence to establish these facts, and even the plaintiffs themselves had admitted during their evidence that the defendants were in exclusive possession of the suit property.

17. The learned appellate Court further held that the only point of contention between the parties was whether on the very same date, i.e. 21.04.2003, an exchange had also taken place between them due to an alleged mistake in the Khasra number mentioned in the sale deed. The Court found this version to be highly improbable. It observed that the defendants had categorically denied executing any such exchange deed, and had consistently asserted that the document relied upon by the plaintiffs was fabricated. The Court reasoned that had there been any bona fide mistake in the Khasra number, the natural and lawful course of

**RSA-653-2021 (O&M)****-8-**

action would have been to execute a supplementary or corrective sale deed (Tatima) either on the same day or shortly thereafter, rather than executing an informal writing of exchange. The absence of any such corrective instrument cast grave doubt on the plaintiffs' story.

18. The appellate Court also observed that the alleged exchange was not accompanied by delivery of possession. Both DW1 and DW2 had categorically stated that they remained in possession of the suit property as its owners on the basis of the sale deed, and the revenue record corroborated their possession. The defendants produced Khasra Girdawaris (Ex. DX1 to DX4), which clearly recorded them as owners in possession of land comprised in Khasra No. 130/1/1 min. This, according to the Court, conclusively established that possession was never transferred to the plaintiffs, thereby demolishing their claim that the exchange had been acted upon.

19. The learned appellate Court noted that even PW2, Harbans Singh, had admitted during cross-examination that the defendants were recorded as owners in possession in the revenue record, and that no mutation had ever been entered on the basis of the alleged exchange deed. He further admitted that possession of the respective properties was never exchanged. The absence of any mutation entry, coupled with admitted non-delivery of possession, in the view of the appellate Court, reinforced the defendants' contention that the so-called exchange deed was a later creation, possibly by converting the signatures obtained at the time of sale into another writing.

20. The Court also emphasized that the exchange deed (Ex. P1) being an unregistered document carried no evidentiary value. While it is true that oral exchanges are permissible in Punjab since Section 118 of the Transfer of Property



Act is not applicable, the Court held that when an exchange is reduced into writing, such writing requires compulsory registration under Section 17 of the Registration Act. The absence of registration rendered the document inadmissible in evidence for the purpose of transferring title or possession.

21. The learned appellate Court also concurred with the trial Court that the suit was hopelessly barred by limitation. The plaintiffs had filed the suit on 08.06.2010, claiming relief on the basis of the alleged exchange deed dated 21.04.2003. As per Article 58 of the Limitation Act, the period of limitation for filing a suit for declaration is three years from the date when the right to sue first accrues. The plaintiffs themselves admitted that the cause of action arose on 21.04.2003, when the alleged exchange deed was executed. Therefore, the suit filed after more than seven years was clearly barred by limitation. The appellate Court rejected the plaintiffs' plea that the cause of action arose a day before the filing of the suit when the defendants allegedly attempted to take forcible possession, holding that this was a false and contrived plea intended to bring the suit within limitation.

22. The Court concluded that the plaintiffs had failed to prove that any valid exchange had taken place or that they ever came into possession of the suit land. The alleged exchange deed was found to be doubtful, unregistered, and inadmissible in evidence, and the plea of mistake in the sale deed was not substantiated by any credible material. Accordingly, the appeal was dismissed with costs, affirming the findings and decree of the learned trial Court.

23. Feeling aggrieved by the concurrent findings of the Courts below, the appellants have preferred this second appeal contending that the impugned judgments and decrees dated 11.02.2015 and 05.08.2016 are contrary to law and

**RSA-653-2021 (O&M)****-10-**

on facts and ought to be set aside. Learned counsel for the appellants has strenuously urged that the exchange deed Ex.P-1 was validly executed on 21.04.2003 and has been fully proved by the plaintiffs on record. There is nothing to show that Ex.P-1 is a post facto, fabricated or forged document and that in any event oral exchange is recognised under the law as being permissible in Punjab and therefore the absence of registration of the writing relied upon by the plaintiffs cannot alone be a ground to reject their case. The writing of an exchange on the same day was only intended to save registration fee and arose out of a genuine mistake in the Khasra number in the sale deed (Ex.D-1) and that the plaintiffs have since been in physical possession of the suit land pursuant to the alleged exchange but the revenue entries continue to bear a wrong Khasra number.

24. The matter raises a short question of fact and law, therefore, no notice was required to be issued to the respondent.

Findings of this Court

25. On a careful and anxious perusal of the record, the evidence, it is evident that the critical questions which require determination are: (i) whether a valid exchange ever took place between the parties on 21.04.2003 so as to transfer title and possession to the plaintiffs; (ii) whether Exhibit P-1 as tendered by the plaintiffs stands proved to be a contemporaneous document executed on that date and not a later contrivance; (iii) whether the plaintiffs can rely upon an unregistered writing of exchange in the circumstances of the present case; (iv) whether possession, which is the primary fact relied upon by the plaintiffs, was in fact delivered to them; and (v) whether the suit is barred by limitation. Each of these facets must be examined in the light of the record.



26. Turning first to the oral and documentary evidence on record, the trial Court has meticulously noted that PW-1 (the scribe/advocate who purportedly prepared Ex.P-1) could not satisfactorily explain when the document was presented or drafted and, crucially, admitted in cross-examination that the ink used in a portion of Ex.P-1 (the portion where the Khasra number is set out marked 'A') differed from the ink used in the remainder of the document. That admission is of material significance. Where a party relies upon a written instrument asserted to have been executed at a given point of time, any internal evidence that portions of the instrument were written at different times, or in different inks, necessarily raises a real and legitimate doubt as to the contemporaneity and genuineness of the document. The trial Court and the first appellate Court were therefore right to treat that feature as gravely suspicious. It is not a mere hyper-technicality but a matter going to the core of the plaintiffs' case that an exchange was in fact effected on the date alleged.

27. The evidence of PW-2, one of the plaintiffs, PW-3 another witness, and the defence witnesses must be read together. PW-2 in his cross-examination admitted the execution of the registered sale deed Ex. D-1 dated 21.04.2003 and further admitted that the defendants were recorded in the revenue entries as owners in possession. PW-3, though initially identifying his signatures, conceded in cross-examination that on the same date the sale deed was executed and that possession stood delivered in pursuance of the sale. He did not support the plaintiffs' case with any affirmative account of delivery of possession pursuant to an exchange. On the other side, DW-1 and DW-2, who were produced by the defendants, gave straightforward testimony that the defendants have been and remain in exclusive possession and ownership of the suit property on the basis of the registered sale



deed and the revenue record. Those witnesses identified the sale deed and the revenue entries in support of the defendants' possession. The cumulative effect of the evidence, when fairly assessed, is that the plaintiffs have not established, by cogent and consistent material, that the purported exchange ever operated in their favour so as to alter title or effect a transfer of possession.

28. The appellant's reliance on the proposition that oral exchange is permissible in Punjab is not without legal foundation in principle; equity and local practice may permit oral transactions in some circumstances. But that very submission underscores an important corollary: where parties choose to reduce an alleged exchange into a written instrument, and where the written paper is relied upon in Court as evidence of a change of title and of possession, the writing must withstand basic evidentiary scrutiny. In the present case the purported exchange deed (Ex. P-1) is in writing yet is unregistered and, more damagingly, exhibits internal discrepancies (different inks) which the scribe himself could not reconcile. An unregistered writing which is materially inconsistent within itself cannot be invoked to displace a contemporaneously executed registered sale deed and an established revenue record without cogent corroboration. The first appellate Court therefore correctly observed that the unregistered writing, standing alone on such a doubtful footing, cannot be given the weight necessary to disturb the effect of Ex. D-1 and the mutations recorded in favour of the defendants.

29. Moreover, the record shows that there was no delivery of possession by the defendants to the plaintiffs in respect of the suit land. Possession is the very substance of the plaintiffs' claim. They assert ownership and possession pursuant to exchange. Yet the evidence shows that the defendants continued in exclusive occupation, that the revenue record i.e. Jamabandi and Khasra Girdawari, recorded



the defendants as owners in possession, and that no mutation was sanctioned on the basis of the alleged exchange. PW-2 himself admitted that no Rapat was entered and that possession was not exchanged. A written instrument unaccompanied by delivery of possession where the transfer of possession is the asserted effect and uncorroborated by entries in the official revenue records, in circumstances where the other side puts forward registered transfer and revenue entries, is incapable of prevailing. The Courts below properly treated the absence of delivery of possession and the contradiction in the contemporaneous record as decisive factors.

30. The question of limitation is an independent and conclusive bar. The plaintiffs' cause of action, if any, crystallised on 21.04.2003 when the alleged exchange was executed. If the plaintiffs genuinely believed they had become owners by exchange on that date they were under a duty to seek relief within the period prescribed by law. Article 58 of the Limitation Act prescribes three years for a suit for declaration from the date when the right to sue accrues. The plaintiffs instituted suit only on 08.06.2010 well beyond the three-year period. The attempt to shift the date of accrual of cause of action to a later date, such as an alleged forcible act by the defendants on the eve of the suit, is not borne out by the record and appears to have been an afterthought designed to escape the rigour of the statutory limitation. Whereas, here, the pleading of plaintiffs and own evidence demonstrate that the accrual of right occurred in 2003, delay of more than seven years cannot be condoned; the first appellate Court was therefore right to conclude that the suit is hopelessly barred by limitation.

31. The appellants' suggestion that the exchange writing was created only to save registration fee and that this explains its unregistered character is not persuasive in the face of the facts. Had the exchange been genuine and



RSA-653-2021 (O&M)

-14-

contemporaneous the mode and circumstances of its execution, the immediate steps to record it in the revenue records, and the delivery of possession would have followed as a matter of course. Instead the sale deed was registered, mutation in favour of the defendants was sanctioned and reflected in the revenue records, and no supporting contemporaneous acts exist to corroborate the plaintiffs' account of an immediate exchange and transfer of possession. On the contrary, the documentary and oral evidence on record consistently support the position that the defendants acquired the suit property by registered sale and have remained in possession ever since.

32. The appellants' challenge to the findings below that Ex.P-1 is doubtful and that the suit is barred by limitation therefore cannot be sustained. The concurrent findings of fact reached by the trial Court and affirmed by the first appellate Court are based upon a proper evaluation of the evidence, draw permissible inferences therefrom, and do not suffer from any perversity or legal error that would justify interference in this forum. There is no demonstrable miscarriage of justice requiring this Court to upset the factual matrix accepted below.

Conclusion

33. For the foregoing reasons, finding no merit in the present appeal, the same is dismissed in limine. The concurrent judgments and decrees passed by the Courts below are well reasoned, based on evidence and do not call for interference

34. Pending application(s), if any, also stands disposed of.

October 27, 2025
tripti

(MANDEEP PANNU)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No.