

In the High Court of Punjab and Haryana at Chandigarh

R.S.A.No. 164 of 1986

Date of decision:

Onkar Singh (through L.Rs)

.....Appellant

Versus

Naurang Singh (through L.Rs) and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. P.R.Yadav, Advocate,
for the appellant.

Mr.Amrinder Vir Singh, Advocate
for Mr.Salil Bali, Advocate,
for the respondents.

Raj Mohan Singh, J.

This appeal is directed against the judgment and decree dated 12.10.1985, vide which suit for permanent injunction filed by the plaintiff was dismissed in appeal by reversing the judgment and decree dated 2.5.1983 passed by Sub Judge, Mahendergarh.

In nut shell, the facts of the case are that plaintiff Onkar Singh claimed plot measuring 22 x 22 *haath* having specific dimensions in exchange of plot measuring 26 x 15 *haath*, vide exchange deed dated 17.9.1980 executed between the parties. Plaintiff claimed to have received the possession of the exchanged plot on the spot, which is shown by letters 'ABCD' in the site plan. Apprehending interference in the plot so exchanged, the plaintiff filed suit for permanent injunction.

Defendants contested the suit and denied the alleged

exchange. Defendants took up the stand that they had no concern with the plot in dispute and also pleaded that Ranjit Singh, Amar Singh and Panna Singh, sons of Sultan Singh, heirs of Har Karan Singh, were owners of the said plot and, therefore, the suit itself was not maintainable as the plaintiff had no locus standi to maintain it.

After filing of the replication, initially, issues were framed on 13.5.1981 and the trial Court proceeded to decide the suit and held that exchange of the plot was proved and decreed the suit vide judgment and decree dated 2.5.1983.

Defendants went in appeal. During the pendency of appeal, lower Appellate Court allowed the amendment of the written statement and framed additional issues No.1-A, 1-B and 1-C and directed the trial Court to re-appraise the evidence and give findings on the additional issues. Thereafter, the trial Court gave findings on the additional issues after giving opportunity to both the parties.

The trial Court recorded findings under additional issues No.1-A to 1-C, vide findings dated 3.5.1985. Trial Court under additional issue No.1-A, recorded that the plaintiff claimed himself to be owner of plot measuring 390 square *haath* i.e. 26 x 15 square haath prior to exchange between the parties. Plaintiff could not prove his ownership on the said plot. The Local Commissioner submitted its report dated 26.1.1985, Ex.D-5, which proved the factum of plot being part of Ahata No.114 house No. 205 and 206. Plaintiff filed objections to the said report also, which were dismissed by the trial Court. The plot was undoubtedly comprised in Ahata No.114 beyond any shadow of doubt. The doubt entertained in the report with regard

to composition of the plot in house No. 205 and 206 was duly explained in the light of the proved facts. Khasra pamaish, Ex.D-8, of the year 1932 B.K. proved that Ahata No.114 was earlier owned by one Harkaran Singh, who was predecessor of Ranjit Singh, Amar Singh and Panna Singh according to pedigree table, Ex.D-4. The land comprised in Ahata No.114 and house No. 205 and 206 was purchased by one Nanar Singh from Ranjit Singh etc. vide sale deed dated 24.1.1983. The plaintiff could not adduce any plausible evidence to prove the ownership of plot measuring 390 square *haath* in his favour and also could not dis-lodge the ownership of Ranjit Singh, Amar Singh and Panna Singh, heirs of Harkaran Singh, who was originally owner of the plot in question. The plaintiff attempted to prove his ownership by way of interpretation of vesting of plot in question in favour of non proprietor under the provisions of Punjab Village Common Lands (Regulations) Act, 1953 and Amended Act 1961. However, no evidence in the said context was adduced by the plaintiff to show that he was in possession of the disputed plot on the date of commencement of Punjab Village Common Lands (Regulations) Act, 1953 or 1961. On the other hand, defendants deposed that the plaintiff was living in Narnaul for the last 40 years. So was the statement of Nanar Singh. The other witnesses also endorsed the factum of residence of plaintiff in Narnaul. Plaintiff never remained in possession of the plot in question. Plaintiff even did not plead in the plaint that he became owner of the disputed plot due to enforcement of Punjab Village Common Lands (Regulations) Act, 1953 or 1961. The witnesses of plaintiff namely Mool Chand

(PW-3), Ram Kumar Singh (PW-4), Banwari (PW-5) and Jagmal (PW-6) deposed differently in the said context. Even the plaintiff did not depose specifically that since when he was in possession of the plot in question. The plaintiff was not the voter of village Satnali nor paid any house tax. With these observations, the trial Court concluded under issue No.1-A that the plaintiff was not owner in possession of plot measuring 390 square *haath* before the alleged exchange.

Additional issue No.1-B was decided by the trial Court by discarding the plea of the defendants that Mahabir Singh became owner in possession of the plot measuring 484 square *haath*, which was allegedly given to the plaintiff in exchange. Mahabir Singh was stated to be adopted son of Smt.Dakhan, who was original owner of the plot in question. Adoption of Mahabir Singh was not proved nor giving and taking ceremony of adoption were noticed on account of any evidence. No document of adoption was proved. Therefore, the trial Court held that the defendants were the only legal heirs of Smt.Dakhan and they became owner of the said plot measuring 484 square *haath* after the death of Dakhan.

Issue No.1-C was decided accordingly on the basis of findings recorded under Issue Nos.1-A and 1-B. Since plaintiff was not owner of plot measuring 390 square *haath*, therefore, he had no authority to transfer the same in the alleged exchange. Even though, Section 118 of the Transfer of Property Act, 1882, which is not applicable in the State of Haryana, the exchange relating to immovable property of more than ₹ 100 was not necessarily to be

registered. Resultantly, the exchange deed Ex.PW-3/1 was held to be a mere paper transaction and was, thus, invalid.

On receipt of report on additional issues, the lower Appellate Court gave opportunity to the parties to file objections to the said newly concluded issues by the trial Court. No objections were received and the appeal was taken up for arguments. The lower Appellate Court on the basis of original issues and newly added issues, summed up the total issues in the following manner:-

“1: Whether the plaintiff is owner in possession of the plot in dispute on account of exchange as alleged ?

OPP

2. Whether the plaintiff has no locus standi to file the present suit ? OPD

3. Whether the suit is not maintainable in the present form ? OPD

4. Whether the plaintiff has no cause of action against the defendants as alleged ? OPD

5. Whether the defendants are entitled to special compensatory costs ? OPD

6. Relief.”

Following additional issues were framed:-

“1-A: Whether the plaintiff was owner in possession of the plot measuring 390 square haath before the alleged exchange as alleged by the plaintiff ?

1-B: Whether the defendants were owners in possession of plot measuring 484 square haath before the alleged

exchange as alleged by the plaintiff ?

1-C: If issues No. 1-A and 1-B are found in the affirmative, whether there was no valid exchange as alleged by the plaintiff ?”

Lower Appellate Court discussed the pleas raised by the plaintiff as well as by the defendants with reference to the evidence on record. The plaintiff based his arguments on the strength of report of thumb impression of Naurang and signatures of Ram Niwas by Sh. S.N.Aggarwal, expert. The plaintiff also relied upon the testimonies of PW-3 Mool Chand, who was attesting witness of exchange deed Ex.PW-3/1 and testimonies of PW-4 Ram Niwas, PW-5 Banwari and PW-6 Jagmal. The report of the Local Commissioner Ex.D-5 was attacked on the ground that there were no three pucca points from where the demarcation could have been started and in this way, the violation of High Court Rules and Orders was alleged. In Shajra Khasra Paimaish Abadi, Ahata No.114, Ghar No.205 and 206 were shown in possession of Sheo Karan and Bhagta, sons of Kirpa Ram respectively and, therefore, the findings under issue No.1-A were attacked in the context of Harkaran or his descendents being owner of the plots. The lower Appellate Court met the arguments of the plaintiff meticulously by observing with reference to record. In Ex.D-8, the property described as Ahata No.114, house No.205 and 206 was shown to be the property of Harkaran in the year 1932. Sheo Karan and Bhagta, sons of Kirpa, were shown to be the tenants. Therefore, the contentions of the plaintiff to bring aforesaid Sheo Karan and Bhagta in the capacity of

owners, was totally devoid of merits. The pedigree table depicted that Harkaran Singh was son of Pohap Singh and Sultan Singh was son of Harkaran Singh. Persons, namely, Ranjit Singh, Amar Singh and Panna were the heirs of Sultan Singh. In this way, Ahata No.114, house No.205 and 206 were proved to be the property of descendants of Harkaran Singh. The report of Local Commissioner i.e. Naib Tehsildar was attacked by the plaintiff in the context of non availability of pucca points at the time of demarcation. The report of Local Commissioner was lawfully appreciated and it was found that according to Naksha Abadi of village Satnali for the year 1932, Ahata No. 69 and 68 were found to be in existence at their original places and there was no change in their configurations. Therefore, these two Ahatas were treated to be permanent points for the purpose of demarcation and accordingly measurements were carried out. Even though there was cumbersome process to locate ghar numbers but Ahata No.114 was fully established. According to the exercise undertaken by the Local Commissioner, there could not have been better mode of measurement of the property in question in the given situation and the report submitted by the Naib Tehsildar/ Local Commissioner was accepted by the lower Appellate Court.

Plaintiff claimed that he had delivered the possession of the property to the defendants. The aforesaid stand of the plaintiff was found to be not in consonance with his deposition made in the cross-examination. In the cross-examination, plaintiff had admitted that he had a house in Satnali, which fell down about 30 years ago.

He never paid any *chulha tax* nor had any vote in Satnali. He was

employed as a driver with an advocate in Narnaul for the last 35 years and was working at the shop of his uncle for the last three years. He also admitted that he had no proof of ownership nor lived in the plot in question. His statement was read in entirety to hold that he was not owner in possession of the plot in question, which was made subject matter of exchange by him in lieu of alleged plot i.e. 22 x 22 square *haath*, allegedly received from the defendants.

The lower Appellate Court also implicated the defendants in making wrong depositions. Factum of Mahabir Singh, having been taken in adoption, was discarded and the stand of the defendants to that effect was deprecated. Ultimately, the Appellate Court accepted the appeal, thereby dismissing the suit of the plaintiff in appeal.

In regular second appeal, learned counsel for the appellant formulated the following substantial questions of law:-

- “1. Whether the finding of the learned Courts below are illegal and suffer from misreading of evidence regarding the finding that the plaintiff has failed to prove the possession and ownership over the plot exchanged ?
2. Whether Local Commissioner Report (Ex.D5) is inadmissible as boundaries shown in the same are contrary to the boundaries of disputed property and same was not taken from three fixed points?
3. Whether the amendment of written statement allowed by the learned first Appellate Court was contrary to law as the petitioner had already filed suit for permanent injunction and also received the costs under protest ?

4. Whether report of Local Commissioner (Ex.D-5) deserves to be ignored for additional issues ?”

Learned counsel for the appellant argued that the findings recorded by the lower Appellate Court are the result of misreading of evidence. Secondly, the execution of exchange deed is fully proved on record in terms of evidence of the witnesses. Thirdly, the report of Local Commissioner (Ex.D-5) is totally inadmissible in law.

On a pointed question with regard to ownership of the plaintiff, on the basis of vesting of land in non proprietors under the provisions of Punjab Village Common Lands (Regulations) Act, 1953 or 1961, learned counsel could not point out any evidence to show that plaintiff became owner of the plot measuring 390 square *haath*, by virtue of vesting of the same in the plaintiff being non proprietor of the village. After report by the trial Court on issue No.1-A, the lower Appellate Court provided adequate opportunity to the plaintiff (respondent in the appeal) to file objections. No objections were filed against the said findings nor the plaintiff could dis-lodge the findings of additional issue No.1-A by way of any evidence, therefore, the plot measuring 390 square *haath*, which was allegedly given by the plaintiff in exchange of plot measuring 22 x 22 square *haath*, was not a transaction of conferring title in lieu of alleged exchanged properties. Since the factum of exchange was denied by the defendants, therefore, it was legally incumbent upon the plaintiff to prove existence of valid exchange with reference to lawful ownership over the plot, so exchanged in lieu of the plot of the defendants.

Once the plaintiff was not found to be having any title over the plot measuring 390 square *haath*, therefore, no amount of evidence of execution of any exchange deed can nullify the effect of non passing of consideration in a transaction of exchange, which make the transaction as a void transaction.

Learned counsel for the appellant relied upon **1973 PLJ 329** titled **Hardit Singh vs. Gulzara Singh and another** ; **2011 (2) RCR (Civil) 246** titled **Randhir Singh vs. Ranjit Singh** ; **2011 (4) PLR 422** titled **Pirthi Singh vs. Lakhpat and another** ; **2004 (2) RCR (Civil) 742** titled **Paramjit Singh vs. Ratti Ram** and **2009 (2) RCR (Civil) 254** titled **Kulwant Singh vs. Kiharaiti Lal and others** to contend that the exchange of immovable property of value of more than ₹ 100 can be effected without registered document. Even the oral exchange of properties do not require any document to be executed and registered. Since provisions of Transfer of Property Act relating to exchange are not applicable in State of Haryana, therefore, oral exchange is legal and permissible. There cannot be any dispute with regard to the legal position held in the aforesaid judgments. For the applicability of aforesaid judgments, there must be a legal exchange of properties. Since the plaintiff could not prove himself to be owner of the property so given by him in the exchange, therefore, the title being sine-qua-non for the applicability of aforesaid precedents, cannot be debated any further. Plaintiff having failed to prove his title on the basis of alleged vesting of property/shamlat in favour of non-proprietors of the village under the provisions of Punjab

Village Common Lands (Regulations) Act, 1953 or 1961, therefore

the plaintiff cannot derive any benefit out of the aforesaid precedents.

Looking into the entirety of the facts and circumstances of the case, the permanent injunction was sought on the basis of alleged exchange deed. The exchange was found to be without consideration (consideration was plot in lieu of plot). In the absence of consideration, the transaction of exchange was void and was not legally enforceable.

Learned counsel for the appellant contended that even if the plaintiff could not have passed better title than the one held by him in the plot so exchanged, he is entitled to injunction on the basis of possessory right. The argument, if minutely appraised in the context of available evidence on record, does not stand to reason. Firstly, in view of cross-examination of the plaintiff himself, his possession over the plot in question is not proved. Secondly, the alleged possession of the plaintiff over the plot so obtained from the defendants i.e. plot measuring 22 x 22 square *haath* cannot be answered in affirmative. The suit itself is based upon title derived through exchange. It is not a simplicitor suit of permanent injunction that the plaintiff could have been evicted by following due procedure of law. The possession of the plaintiff over the plot measuring 22 x 22 square *haath* is not proved by way of any acceptable and legal evidence. Moreover, the alleged plea of taking possession of the plot in question is not on account of any lawful means. The proposition as enunciated in the context of very entry of a party over the property by lawful means and, thereafter, the possession of said party becoming unauthorised with the happening of some event may give

rise protection of getting evicted by following due procedure of law, but here is a case in which even initial alleged entry of the plaintiff over the plot is not proved, therefore, such a proposition is not attracted.

The question of law on the factum of admissibility of report of Local Commissioner also to be held in negative. The Local Commissioner, as a matter of fact, found two Ahata numbers 68 and 69 according to Naksha Abadi of the village for the year 1932. The configurations of these two Ahatas were found to be constant having no change therein. These two Ahatas were considered to be permanent points for the location of Ahata No.114 and accordingly, measurements were carried out. Such a course cannot be held to be in violation of High Court Rules and Orders in the context of demarcation. No other question of law arises for consideration of this Court.

Having considered all the arguments, this Court finds that no substantial question of law worth cognizance is involved in the appeal and the same is accordingly dismissed, leaving the parties to bear their own costs.

January , 2015
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(RAJ MOHAN SINGH)
JUDGE