

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

RSA No.1434 of 1989

DATE OF DECISION: January 07, 2015.

Naranjan KaurAppellant.

VERSUS

Ujagar SinghRespondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

Present: Mr. Tarun Singla, Advocate for the appellant.

SNEH PRASHAR, J.

1. This was an appeal preferred by Naranjan Kaur wife of Udham Singh, appellant-plaintiff impugning the judgment and decree dated 14.02.1989 passed by learned Additional District Judge, Jalandhar, allowing the appeal preferred by Ujagar Singh son of Gulzaraa Singh, respondent-defendant against the judgment and decree dated 30.07.1986 of Sub Judge 2nd Class, Phillaur, vide which suit of the appellant for declaration and permanent injunction was partly decreed.

2. Appellant Smt. Naranjan Kaur claiming to be owner in possession of land measuring 14 Kanals 07 Marlas being half share of land measuring 28 Kanals 14 Marlas comprised in Khasra Nos.323, 324, 325, situated at village Dyalpur, Tehsil Phillaur, as per Jamabandi for the year

1980-81 (hereinafter to be referred as the “suit land”) sought a declaration to the said effect and as a consequential relief prayed for a decree of permanent injunction restraining Ujagar Singh (defendant-respondent) from interfering in her possession over the suit land.

3. The appellant averred that she was owner and in possession of 07 Kanals 0 Marla land being 140/664 share of land measuring 33 Kanals 04 Marlas comprised in Khasra Nos.673, 674, 657, 755 to 762, situated at village Dyalpur, Tehsil Phillaur. Ujagar Singh and his father Gulzara Singh were owners in possession of the suit land. They exchanged their respective lands by virtue of which she (appellant) became owner in possession of the suit land and Ujagar Singh and his father became owners of the land measuring 07 Kanals 0 Marla. Accordingly, possession of the land was delivered to each other. The transaction of oral exchange was later on reduced into writing by way of memorandum of exchange dated 24.06.1977 in order to avoid any party resiling from the same.

4. The appellant pleaded that Gulzara Singh father of Ujagar Singh (respondent) had expired and the respondent had succeeded to his estate being his legal heir. Since the day of exchange, the parties are in possession of the lands received in exchange as owners. However, due to ignorance of law and existence of good relations they did not bother to get the 'mutation of exchange' sanctioned in their respective names. Taking undue advantage of the omission in the revenue record and on instigation by her enemies, Ujagar Singh (respondent) had started proclaiming himself to be owner of the suit land and had been threatening to take possession of

the same forcibly. His illegal act necessitated filing of the present suit.

It was mentioned by the appellant that the previous civil suit filed by her was withdrawn vide order dated 05.10.1985 of the Court with permission to file a fresh one on the same cause of action. Alleging that the respondent had no right, title or interest in the suit land, the appellant prayed for a declaration and an injunctive order against the respondent as indicated above.

5. The suit was contested by respondent Ujagar Singh. In the written reply filed by him, he raised preliminary objections with regard to locus standi of the appellant, maintainability of the suit in the present form, estoppel and the suit being barred by limitation etc.

Replying on merits, the respondent denied that the appellant has any concern whatsoever with the suit land. According to him, he and his father were owners in possession of the suit land and were also co-sharers in another land situated in the same Khewat as well as on the well in existence in the suit land. He denied that he and his father Gulzara Singh had exchanged the suit land with the appellant or had thumb marked any document of exchange. He denied that the alleged memorandum of exchange bears his/his father's signatures or thumb impressions.

The impugned memorandum of exchange was further challenged by the respondent on the ground that it was never intended to be and was in fact acted upon as no recital in the revenue record was got entered on the basis of the alleged exchange deed. Otherwise also, the alleged exchange deed could not be said to be a valid document of title for

want of registration and being without consideration. The respondent even denied that the appellant was owner of 07 Kanals of land as mentioned in Para no.1 of the plaint.

Lastly, submitting that the appellant never asserted any right on the suit land during the life time of Gulzara Singh and never objected to his possession over the suit land and that she had not come to the Court with clean hands and therefore was not entitled to the relief based on equity, a prayer for dismissal of the suit was made.

6. On the rival contentions of the parties, following issues were settled:-

- (1) Whether the plaintiff is owner in possession of the suit property? OPP.
- (2) Whether written statement is not complete and not properly verified? If so, its effect? OPD.
- (3) Whether the suit is not maintainable in the present form? OPD.
- (4) Whether the suit is time barred? OPD.
- (5) Whether the plaintiff is barred by his act and conduct from filing the present suit? OPD.
- (6) Relief.

7. Both the parties led oral and documentary evidence to substantiate their pleadings.

8. Considering the evidence available and the submissions made on behalf of the parties, learned trial Court held that by virtue of

memorandum of exchange the ownership of the suit land vested in the appellant and decided Issue no.1 in favour of the appellant. Issue no.2 was settled against the appellant for not pressed during arguments. Similarly, Issues no.3, 4 and 5 were decided against the respondent for not pressed at the time of arguments and the suit of the appellant was partly decreed. A declaration of her ownership qua the suit land was passed but finding her not in possession of the suit land, the relief of injunction was declined.

9. Respondent Ujagar Singh preferred an appeal and by virtue of judgment dated 14.02.1989 the appeal was allowed and setting aside the judgment and decree passed by learned trial Court the suit of the appellant was dismissed with costs throughout.

10. Feeling aggrieved by the impugned judgment and decree passed by learned first appellate Court, the appellant preferred the second appeal.

11. The submissions made by Mr. Tarun Singla, learned counsel representing the appellant have been considered and record perused.

12. Appellant Smt. Naranjan Kaur claimed to be owner in possession of the suit land on the ground that by virtue of an oral exchange agreement, which was later on reduced into writing vide memorandum of exchange dated 24.06.1977 Ex.P1, she had given land measuring 07 Kanals owned by her (detail of which was given in para no.1 of the plaint) to Gulzara Singh and respondent Ujagar Singh and had received the suit land measuring 14 Kanals 07 Marlas in exchange and since then had been owner in possession of the suit land. The respondent contested her claim

saying that there was only an agreement but the same was never acted upon. He denied exchange of possession of the respective lands in compliance of the exchange deed.

Thus, the contentious issue between the parties was whether appellant Naranjan Kaur was owner in possession of the suit land on the basis of exchange transaction incorporated in the agreement Ex.P1 as noticed above. Learned trial Court held the appellant owner of the suit land but at the same time found that she was not in possession of the same. Reversing the said finding, learned first appellate Court negated the claim of the appellant of ownership as well as possession qua the suit land.

13. Respondent Ujagar Singh though in his pleadings denied the transaction of exchange and execution of the exchange deed but during his deposition he admitted that the memorandum of exchange Ex.P1 was thumb marked by his father Gulzara and that he too had thumb marked the same. But at the same time, he firmly deposed that the agreement did not materialize because the appellant did not own full land i.e. land measuring 07 Kanals as mentioned in the agreement. He added that there is no land measuring 07 Kanals owned by appellant Naranjan Kaur.

14. The case of the appellant was that by virtue of an oral exchange, possession of the lands purported to be exchanged was delivered by her and Gulzara Singh and respondent Ujagar Singh to each other and it was later on that the memorandum of exchange Ex.P1 was reduced into writing so that none of the parties could back out from the agreement of exchange. Undisputedly, the provisions of Section 118 of the Transfer of

Property Act are not in force in Punjab and as such the technical requirement thereunder with regard to exchange are not applicable. Resultantly, a transaction of oral exchange is permissible under law. However, such an oral exchange to be effective it has to be accompanied by delivery of possession of the properties exchanged. In other words, transaction of oral exchange becomes complete and recognizable only by delivery of possession.

15. Reverting to the instant case, the appellant alleged that there was an oral exchange of lands between her and respondent Ujagar Singh and his father Gulzara Singh. While she gave possession of 07 Kanals lands owned and possessed by her to Gulzara Singh, the possession of the suit land measuring 14 Kanals 07 Marlas was delivered to her.

No date of the transaction of oral exchange was pleaded or proved by the appellant. The date of delivery of possession of the suit land to her was also silent in the pleadings as well as in her deposition. A perusal of the memorandum of exchange Ex.P1 reveals that it was an agreement for exchange of the lands by partition thereto between appellant Naranjan Kaur and Gulzara Singh. Respondent Ujagar Singh and Udham Singh (husband of the appellant) had consented to the agreement by thumb marking the same.

A recital in the agreement indicated that the exchange had already taken place but at the same time the terms of the penal clause unambiguously proved that the transaction was not yet complete. It was mentioned that parties will get the mutation of exchange entered and

sanctioned by making required statement and that in case of breach of the terms, the defaulting party will pay to the other party ₹15,000/- by way of damages. Meaning thereby that the transaction of the exchange was to be completed by making statement before the competent authority for getting a mutation evidencing the exchange entered and sanctioned in the revenue record. Had the possession been delivered already there was no necessity to incorporate the penal clause.

16. Admittedly, none of the parties initiated any step for getting the mutation entered, therefore, the question of sanction of the mutation never arose. The transaction of oral exchange was never reported either to the Patwari of the area or any other competent authority. Learned first appellate Court rightly observed that the explanation of the appellant that because of the trust and confidence, no entry was got made in the revenue record cannot be accepted in view of the specific penal recital in the memorandum of exchange Ex.P1 that the party who will commit default in making statement before the competent authority for sanction of the mutation will pay ₹15,000/- by way of damages. In view of the said clause, had there been default on part of only one party, the other party would not have remained silent for such long period.

17. Be that as it may, the recital of delivery of possession on the basis of oral exchange in Ex.P1 is not supported by any oral or documentary evidence of the appellant. There is no entry of exchange of lands between the appellant and Gulzara Singh, father of respondent Ujagar Singh, either in the Jamabandi or the Khasra Girdawaris. No doubt, in the Jamabandi

Ex.P4, Udham Singh, husband of the appellant is recorded as co-sharer to the extent of half share in the suit land measuring 28 Kanals 14 Marlas and the other half share is recorded to be owned by respondent Ujagar Singh and his brother Gurmej Singh and the land is shown to be in possession of 'Udham Singh co-sharer'. By no means the said possession of Udham Singh can be related to the appellant or to the alleged transaction of exchange she had referred to. It was not her case that possession of the suit land was delivered to her through her husband. In fact, her husband Udham Singh was a co-sharer in his independent capacity and was in possession thereof.

18. It is not only that the appellant is not in possession of the suit land allegedly delivered to her in exchange by Gulzara Singh, there is also no oral or documentary evidence to prove possession of Gulzara Singh and after him of respondent Ujagar Singh and his brother Gurmej Singh on the land measuring 07 Kanals allegedly given in exchange to them by the appellant. Jamabandi Ex.P3 fails to depict possession of respondent Ujagar Singh on any portion of the land out of which the appellant alleged that 07 Kanals of land was given in exchange to Gulzara Singh and respondent Ujagar Singh.

19. Another exchange deed Ex.P2 dated 24.06.1977 was tendered in evidence by the appellant to prove that having exchanged land with her, Gulzara Singh had entered into an agreement of exchange with one Jarnail Singh vide which he had given the land obtained in exchange from her to Jarnail Singh. The entries in the Jamabandi Ex.P3 do not indicate possession of Jarnail Singh also on any portion of land in the Khewat in

which appellant Naranjan Kaur claimed to be co-sharer. Therefore, the entries do not support the recital in Ex.P2 of exchange of lands between Gulzara Singh and Jarnail Singh. The entries in the revenue record in the column of ownership as well as possession qua the suit land continued to be recorded as such as i.e. in the name of Gulzara Singh and after him in the name of Ujagar Singh and his brother Gurmej Singh. From that it follows that the exchange deed Ex.P1 was never acted upon and the parties continued to remain owner in possession of the lands owned by them.

In the above premises, the judgment and decree passed by learned first appellate Court is upheld and the instant appeal having no merit is dismissed.

(SNEH PRASHAR)
JUDGE

January 07, 2015
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